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TRANSIT ASSISTANCE ACT OF 1981

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND URBAN AFFAIRS

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 1160

TO AMEND THE URBAN MASS TRANSPORTATION ACT OF 1964 TO PROVIDE AUTHORIZATIONS FOR APPROPRIATIONS, AND FOR OTHER PURPOSES

MAY 15 AND 20, 1981

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

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TRANSIT ASSISTANCE ACT OF 1981

FRIDAY, MAY 15, 1981

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met at 9:05 a.m. in room 5302 of the Dirksen Senate Office Building; Senator Richard G. Lugar, chairman of the subcommittee, presiding.

Present: Senators Lugar and Heinz.

OPENING STATEMENT OF SENATOR LUGAR

Senator LUGAR. This meeting of the Subcommittee on Banking, Housing, and Urban Affairs is now called to order.

We are privileged to have today the opportunity to discuss mass transit in the country. This is the first of two hearings prior to a markup which this subcommittee will undertake, and I want to make an opening comment before welcoming the distinguished Secretary of Transportation who will be our opening witness this morning. Before reading that statement, I want to point out my own debt to the very talented staff of the subcommittee.

All ready with the very substantial achievement of massive housing legislation through the committee and on to the floor, it is both the peculiar opportunity and responsibility of the subcommittee to handle the housing authorizations and the mass transit authorizations in a very short period of time, and so they have worked, in a bipartisan way, I think, with extraordinary efficiency and ability. But Senator Garn and I have, in fact, following the drafting by the administration, presented a bill which will be the basis for our hearing today.

The members of the subcommittee or full committee may have other ideas and other additions and other pieces of legislation as we proceed, but today we begin hearings on the Mass Transit Amendments of 1981 as proposed by President Reagan. It is important legislation that gradually reduces the level of Federal support for mass transit over a 3-year period of time.

At the same time it reduces the regulatory burden the Federal Government places upon mass transit operators.

It is critical that the changes are passed as a package. It would be wrong to reduce funding without providing means for operators to live within tighter budget constraints. We cannot make up the entire difference in resources through a reduction in regulation. But we can provide some relief, and the committee intends to do so.

Some have suggested that we do not need to pass mass transit legislation this year. And they state, correctly, that there are exist-

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ing authorizations for 1982, and thus we might make only budgetary changes required by the Congress.

But I think that course of action would be a mistake. The Senate has voted already to adopt a budget for the period 1981 to 1984 that reduces transit spending by $5.7 billion. The House of Representatives and the Gramm-Latta substitute has adopted a budget for the period 1981 to 1984 that reduces transit spending by an additional $3.43 billion.

If we make only budgetary changes with no new authorizing legislation, we will have created the worst possible situation for our cities. We will have drastically reduced funding but we will not have reduced the burden the Federal Government places on transit providers, and that burden is a heavy one. UMTA is one of the most burdensome of Federal agencies. It's not all UMTA's fault, the statutes are responsible for most of that burden.

At the same time we must provide some predictability for the cities. If we only meet our budgetary requirements, then the cities will not know how to prepare for the future. They will know that there will be less support, substantially less support, but they will not know what form that lesser support will take. And it is unfair to expect cities to prepare for an uncertain future that guarantees significantly less Federal assistance without telling them what form that reduction will take.

Now, let me be clear. The budget reductions will take place. The House and Senate have already acted. We know the ceiling and the floor for transit spending. The only question is how that decrease will be implemented.

I believe the administration's proposal is a good one. They answer the question of implementation fairly and comprehensively.

But today's and next Wednesday's hearing will examine the proposed legislation to see where improvements can be made. And I am confident that our witness can give us constructive suggestions on how we can make the large budget reductions required in the most equitable and humane manner.

And with that introduction, Mr. Secretary, I turn to you and welcome you to the subcommittee on behalf of Senator Garn to the full committee. You come with distinguished credentials in public and private service, already making a mark in your current role, and we are especially grateful to have you as our leadoff witness this morning.

STATEMENT OF DREW LEWIS, SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ARTHUR E. TEELE, URBAN MASS TRANSPORTATION ADMINISTRATOR; CAROLINA MEDEROS, CHIEF, TRANSPORTATION ASSISTANCE PROGRAMS, DEPARTMENT OF TRANSPORTATION; AND CAROL FORYST, ASSOCIATE ADMINISTRATOR FOR POLICY, BUDGET AND PROGRAM DEVELOPMENT, URBAN MASS TRANSPORTATION ADMINISTRATION.

Secretary LEWIS. Thank you very much, Mr. Chairman. I think you've stated my position better than I could myself, so rather than read my prepared statement, I would ask your permission to have it become part of the record, and just make two or three comments to highlight our concerns.

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First, with me today is Art Teele, who is the Administrator of UMTA, as you know, and with me also is Carolina Mederos, who is our Assistant for Budget and Programs.

PHASE OUT OPERATING SUBSIDIES

Basically our philosophy, as you have pointed out, is to gradually phase out operating subsidies, but to continue on our capital program. Our capital program will fundamentally emphasize bus purchases and rail modernization in the long term. As we are able, through the President's economic recovery program, to develop increased resources at the Federal Government level, we would like to come back to you and to the administration for an increase in investment and capital expenditures.

We do not feel that we should be involved in the operating side of these mass transportation systems. Basically our total operating subsidy is about 13 percent on a national basis, but despite our relatively small involvement, we do not participate at all in the labor negotiations and the routing, maintenance and operation of these systems or in their management. We therefore think that the responsibility for operating costs should be totally local.

We are addressing two or three areas which we think are of significance in, as you indicated, reducing regulation. We think our proposal, in terms of regulation 504—regulation having to do with the handicapped—is a reasonable approach to give local authorities the option to make their own determination as to how best to handle that problem.

We also are looking very seriously at 13(c) in terms of labor protection requirements. We're not here with a specific recommendation on that, but we are reviewing that with the Labor Department.

So there is no mistake, despite our move in the Department of Transportation toward more user fees, that we do have a commitment to mass transportation. Witness the fact that the Northeast Corridor will be completed with a very adequate budget, in our judgment, of another $800 million. We have made a commitment, as we are able to transfer Conrail into the private sector, that we will support the Conrail commuter service. We recognize that the fare box is really the only user tax for mass transportation, and therefore we understand that in the future, as now, we will continue to be subsidizing Amtrak. The only areas we feel we should get out are the local operations of the local mass transportation systems.

We do feel that if you look at our proposed years during the phase out—3, 4, and 5 years—that we're only talking actually on a national basis of about 17 cents in the fare box, which is not unreasonable.

We also feel that with the reduction in regulation that we are providing and with management improvement and greater labor productivity than we are presently getting from the system, that the increase required from our removal of Federal funding in this area can be negligible, if anything at all.

That will be all that I will say in terms of my opening comment, Mr. Chairman. We are prepared to answer any questions you may have.

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Senator LUGAR. Thank you very much, Mr. Secretary.

For the benefit of the record I have a number of questions, and I will proceed to express them to you; then to ask your associates if they wish to make other comments or to divide the responsibility as you might require.

Mr. Secretary, as we reduce the fundings for the programs, it's critical to reduce the cost of compliance with the regulations. UMTA, rightly or wrongly, has a reputation for a heavy regulatory hand. It is especially important that the Department of Transportation insure that the least costly and difficult set of regulations be imposed upon the cities. What cost-saving features are contained in the legislation that we are considering, and what is your estimate of the cost value of those changes in regulations? Could you make comments on that?

COST SAVING OF $4 BILLION

Secretary LEWIS. I would say that one of the most significant is our proposal with respect to section 504 requirements, which I mentioned. We don't have a definitive figure on that, but certainly in terms of a national system, we will be talking about a minimum of probably $4 billion.

Senator LUGAR. $4 billion.

Secretary LEWIS. We think that is a significant saving. It is a rough calculation.

Senator LUGAR. Over what period of time?

Secretary LEWIS. Excuse me. That would be a savings of capital expenditures for retrofitting transit facilities and equipment. On 13(c), we are looking at that as far as labor protection is concerned. We don't have a definitive answer on that. We feel we will shortly. We also feel we should be less involved in bus specifications than we have been to date, and we're now working on our "White Book" to determine what actions are to be taken in that area.

Basically, Mr. Chairman, what we are doing is to review every single regulation in our Department, every regulation that might reasonably be removed, that would help local municipalities and local systems operate more effectively. We are prepared to move in the direction of, if you want to call it, deregulation of the Department of Transportation to accommodate local needs.

And to the extent people are testifying here today, they have concerns about problems which are imposed on them by the Department of Transportation. I would hope that they would contact us with their recommendations. We are currently reviewing our whole regulatory program.

Senator LUGAR. Mr. Teele, do you have any more detailed figures? The reason I raise this, and I would ask your helpfulness, is that clearly the amount of money that the Federal Government is going to be spending to local operations is going down. Now, one of the promises of the legislation is that the amount of regulation is going to be going down; and it is important, it seems to me, in the initial consideration by the country, as well as the individual operators, that we be able to quantify some idea of what savings are involved in this lessened regulation, and if you admittedly—off the top of your head, you may not have had an opportunity to quantify

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those aspects, but for the record at least in the next few days, would you be able to submit additional estimates?

Secretary LEWIS. We will look at our entire regulatory package and we will submit detailed figures to you understanding that they are going to be rough estimates.

[The following was received for the record:]

ESTIMATED SAVINGS FROM DECREASED REGULATIONS

This Administration is committed to promptly reevaluating regulations to determine whether each regulation is cost effective and is the least burdensome alternative for accomplishing its objective. We want to save money by reducing red tape for grantees, providing more local flexibility and decision-making responsibilities, and speeding project implementation.

UMTA is now involved in reviewing its regulations to determine whether the costs of current regulations are justified by their benefits, whether they are less than the costs of alternatives, and whether dollar costs are outweighed by other societal costs (such as maximized domestic employment). UMTA's reviews will also look at regulation costs on small entities (including small jurisdictions, manufacturers, or transit and paratransit providers), pursuant to the Regulatory Flexibility Act.

We have made the following rough estimates of costs associated with UMTA's existing requirements.

The rail mass transit part of DOT's 504 regulation has a 30 year cost range of $1-4 billion, depending on the mix of hardware, services, and scheduling chosen by local communities. Wheelchair lifts for buses add between $10-15 thousand per vehicle. For both bus and rail systems, initial capital costs are followed by recurring operating costs that vary highly depending on maintenance practices, hardware designs, and work rules.

Cost burdens of 13(c) labor protection arrangements have been tentatively characterized, but the nature of these costs makes it difficult to quantify them nationally. First, project delays to obtain 13(c) labor approvals for grant applications can increase construction costs up to 12-18% per year due to inflation, while 13(c) delays have increased demonstration project costs even more because of rapidly increased operating costs. Second, critics have asserted that 13(c) approvals for projects have become part of the overall fabric of transit management-labor relations and as such have served to leverage contract collective bargaining. Such leverage might have contributed to higher wages and contributed further to higher operating costs. (Wage totals went from around $1.6 B in 1970 to $3.9 B in 1978, so even small percentage 13(c) impacts might involve substantial sums, especially on a city-by-city basis). third, 13(c) approval procedures have been linked with labor resistance to productive work rule changes, excessive protection payments to existing employees, and red tape problems. (At least one Philadelphia system, Port Authority Transit Corporation, avoided these feared costs by building its system without UMTA funding.) The last significant 13(c) cost area involves restrictions on management's right to inovate and the barriers that inhibit majcr new roles for provate transit and paratransit operators, e.g. providing lower cost, complementasry and substitute service in lieu of expensive, publicly-owned services. Currentl, no grantee or institution has documented or quantified potential savings of these 13(c)-related cost urdens for UMTA review.

UMTA's specifications for Advanced Designed Buses (The "Whitebook") have been blamed within the industry for significant cost increases even though the specifications were written after the buses were designed. These buses, which currently cost $150,000, are $10,000 more than the "new look" buses of a former design. UMTA is now trying to carefully assess the allocation of cost increases due to the Whitebook, as well as the impact on bus prices and competition of withdrawing the Whitebook as a procurement requirement.

Regulations for public hearing requirements for service and fare changes have been controversial for their administative costs, while delays for public hearings have been criticized for unduly postponing service cutbacks, cost-savings, and fare increases.

"Buy America" regulations have provisions that could increase bus and rail vehicle capital costs as much s 10 percent above costs of imported products.

Regulations with inherent delays for public input, alternatives analysis, environmental impact assessments, and complex Section 3 and 5 applications are also associated with both administrative costs and 12-18% annual inflation cost increases for postponed construction projects.

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Mr. TEELE. As the Secretary is indicating, it is difficult to quantify in precise terms the savings without some speculative aspects, but one notable regulation that is addressed in our legislation is the statutory provisions that requires a public hearing. Quite frankly it was suggested to us by the distinguished APTA lobbyist. As you know, pursuant to the section 5 regulations, we require a public hearing for any changes in service. A number of, quite frankly, horror stories have been revealed to us. We reviewed that, and we are proposing that change.

The dollar impact, of course, can be quantified both in terms of the publication in the newspapers or the print media as well as the loss in time to implement those types of services. As the Secretary has indicated, there are a number of statutory changes contained in our legislation and we will be able to quantify those with the caveat that it will have a certain speculative aspect.

Senator LUGAR. I appreciate that. I think the record will be a great deal more complete if we had that information.

Mr. Secretary, you have touched upon the bus specification issue, but let me try to hit this to make certain that we have it pinned down for the record. The so-called White Book establishes specifications for bus purchases, and it has been blamed, by some observers, for a large increase in bus cost over the last few years. Under the current legislative proposal, specifically how will UMTA regulate local procurement or to what extent does it plan to regulate local procurement of buses in the future?

WHITE BOOK UNDER REVIEW

Secretary LEWIS. It is our intention, as I indicated in my introductory remarks, to provide local communities with greater flexibility. As far as the White Book itself is concerned, it is not addressed in the legislation. This is currently under review in our department. We are aware of the problems that have existed because of the White Book, and we feel local communities should have much greater flexibility than they presently have. This analysis will be completed in the near future, and we will submit it to you as soon as it is complete.

Do you want to comment further on that, Art?

Mr. TEELE. Mr. Chairman, the White Book specification quite frankly has not been widely understood, and it is primarily our fault that we have not offered a fuller explanation of what the purpose of the White Book is and how we got there. Originally the White Book was designed as a basic design specification versus a performance specification. It was developed primarily pursuant to OMB Circular A-102 to insure that the competitive nature of two relatively similar items were not so-called "specced out." There are some, quite frankly, cosmetic differences between the two buses or the two manufacturers such as an advertising reg, but if we allowed for the specification of a bus that had an advertising reg, then you would have in effect specified one of the two buses. That is the genesis of the White Book.

As the Secretary has indicated, we are reviewing the White Book and the associated regulatory burdens associated with it, including the price offsets that are provided. We will have that analysis

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completed and we will make it available to this committee upon doing so.

Secretary LEWIS. I might add, Mr. Chairman, that in our legislative proposal we have recommended that section 12(b)(2) be deleted, which is really the part that gives the Secretary the authority to say that rolling stock should be purchased based on its performance, standardization, life cycle cost, and other factors deemed appropriate by the Secretary. We want that removed so that our role will be advisery in nature and not one in which we impose on the local authorities what the Department of Transportation thinks is best.

Senator LUGAR. Mr. Secretary, clearly the decreases in funding at the Federal level require local transit operators to improve management to become more efficient than in the past, and clearly there is an obligation on the part of the Federal Government to assist in that process. Just for the record, staff has given to me a pile of paper of this degree of thickness (indicating).

Senator LUGAR. I'm advised that the local transit operator must fill this out just to comply with section 15, data collection requirements. We went through a similar exercise in housing. It was somewhat more horrendous at that time. The Secretary, I think had an accumulation of 2,400 pages of applications that we are all dedicated to whittling back down to the 100 we used to have, and this is not 2,400 pages, but it is a substantial amount.

Let me simply inquire of you. What sort of systematic program is underway in your Department or in its mass transit component to attack this problem that seems overwhelming in almost each area of Government that we look at, namely extraordinary requirements that must, in the collective, make predigious cost demands on those that are involved.

Secretary LEWIS. Mr. Chairman, we are reviewing every single report within our Department. And I might add, just as we require the local authorities to submit reports to us, the Congress requires the Department of Transportation to submit reports to you, and almost on a weekly basis I have two or three inches of material which I send up here, which I'm sure nobody reads I think in general, at all levels of Government, we have to try to remove this regulatory material that is sent up for no good reason whatsoever.

I would like to mention other areas that we are working in which we think will be helpful to local communities beyond the reduction of the regulatory problems. One is in the area of maintenance. We are doing research and development on how we can be helpful in an advisery capacity. We are also looking at the possibilities of some kind of a packaged computerized run that can be used in terms of routing and scheduling. So we are going to assist the local communities in anyway we can where we can do a better job than they from a central standpoint, but again we are not going to impose on them what we think, just because we're here in Washington, is necessarily the right thing for them.

Senator LUGAR. Clearly you will be cooperative with this committee and you can have staff work with you to try to weed out the requirements that the Congress imposes upon you and affect some house cleaning even in that area.

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Secretary LEWIS. We will be submitting recommendations on that if they are necessary. We are obviously pleased to prepare the material.

Senator LUGAR. I understand. Why have you chosen to use the 1970 data rather than the 1980 data in computation of the operating assistance formula?

Secretary LEWIS. Basically because we are phasing this program out, as you know, over the next 5 years and we felt that there was not much merit to bringing new cities that presently are not involved in operating subsidies under a program that is being phased out. And second, it does help the older cities that are in the greatest trouble in terms of mass transportation operating cost. We felt for those two reasons that there is no need to shift to the 1980 data at the present time.

Senator LUGAR. So just to make certain that the record shows this, there was an attempt made, a deliberate attempt for the use of the 1970 data to help older cities of this country who have special problems in this area?

Secretary LEWIS. Yes, and also not to bring new cities that previously weren't covered into the program.

Senator LUGAR. Why, in your judgment, have bus prices increased at a greater rate than overall inflation in our economy?

COST INCREASE DUE TO REGULATIONS

Secretary LEWIS. Actually, if you discount the costs that resulted from our regulations and requirements that we imposed on the bus manufacturers, the cost of the buses really has not exceeded the cost of inflation. I think it is largely Government regulations that have caused the problem. The regulations that were coming from our Department made the cost of buses actually exceed the present level of inflation.

Senator LUGAR. The regulations from the Department then were responsible and if you took the regulations away, you would have had a normal flow of inflation?

Secretary LEWIS. We think very much so. That is one reason we want to get out of the bus specification business.

Senator LUGAR. What has been the effect of the current buy America provision of the law, and has it increased the capacity of American firms to compete in the transit market?

Secretary LEWIS. We think it has helped a great deal. As a matter of fact, Bombadier, a Canadian company, now has a U.S. manufacturing facility because of this requirement. The requirement has been applied to 8 contracts let for some 1,025 railcars for about $605 million. We think it has been a satisfactory requirement and would recommend its continuation.

Do you want to add further to that, Art?

Mr. TEELE. We have had some very good byproducts, as the Secretary has indicated. There are at least two new foreign bus manufacturers that have decided to establish manufacturing facilities here. An additional one is now looking to move here. We think this competition will also have a very healthy effect on the previous issue you raised regarding the increase in the cost of buses at a rate faster than inflation.

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Senator LUGAR. We have been joined by the distinguished Senator from Pennsylvania, our colleague, Senator Heinz. Senator Heinz, I would like to afford you an opportunity to make an opening statement and to proceed with questions.

I have additional questions after Senator Heinz has had an opportunity, I will go back to those in due course.

Senator HEINZ. Thank you, Mr. Chairman. I have no opening statement, so we will save a little time in that way.

Mr. Secretary, it is nice to see you. I do have a number of questions. I would like to focus first on the issue of the phaseout of mass transit operating subsidies that the administration has proposed. As I understand it, Mr. Secretary, the President defended the termination of operating assistance by saying that, in part, poor people will not bear the brunt of these increases, and that this is so because most beneficiaries of public transit are middle or upper class. That is not true in most areas of Pennsylvania. And I believe that statement ignores the very real issue of transportation needs for the elderly, the handicapped, and for low-income people. It is true where you have commuter rail segments, but it is not true for buses.

How would you respond?

Secretary LEWIS. Well, basically, Senator, first of all our total operating subsidy, as you know, at the Federal level is about 13.5 percent of the total subsidies in this country. On a national basis over the 5-year-phaseout period, we're talking, if there were no other sources of funds or cost savings, be about 17 cents at the fare box over that total time period.

We believe that——

Senator HEINZ. Might I just correct something you inadvertently said—it is not 13 percent of the total subsidies, it's 13 percent of the gross revenue.

Secretary LEWIS. That is correct. Thank you.

In our judgment, by reducing regulations, by modifications of the 13(c) labor protection requirements which we talked with the chairman about earlier, by the modification of regulation 504 for the handicapped for which the retrofitting cost would be about $4 million if it were done across-the-board, we think those increases should not even be as high as that 17 cents over the time period.

Further, we feel the role of the Federal Government should be on the capital side of mass transit. We have no control over negotiations with labor. We have no control over routing. We have no control over management. We have no control over maintenance. Nor should we have.

On the other hand, for example, as you know, we just had a settlement in Philadelphia with SEPTA. In that particular system we provided 20 percent of the funds. In our judgment, there were certain aspects of the labor settlement which we felt that from our viewpoint were unsatisfactory, yet we had not role whatsoever to play in that, despite the fact that we were putting up 20 percent of the dollars.

REQUEST ADDITIONAL FUNDING

It is my feeling, and I made this comment in my opening statement, that assuming we are successful in curbing inflation and

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that we go through the budget cuts, we're going to get lower interest rates. As this economy becomes more vital and as more funds are available to the Federal Government, the first area that I would like address in the Department of Transportation would be for increased funding of capital mass transportation expenditures. We feel that is the role we should play. I am totally satisfied, as we get the economy under control, to request additional funding on the capital side from the administration, and I so notified them as we put our budget together.

We think our role should be the purchase of buses, the purchase of rail cars, car barns, the upgrading of the systems themselves. And as you know, rail modernization is an extremely vital part of the programs needed in Pennsylvania, specifically.

So I don't want our proposal interpreted as lack of commitment on the part of the administration to mass transportation. It is based on our belief that the Federal role should be changed from operating to capital, and hopefully, as we get the economy under control, what we are losing on the operating side, we will be able to pick up on the capital side.

Senator HEINZ. There is much you say that I can agree with Mr. Secretary. My question, however, was really the premise stated by the administration for the reduction and phaseout of operating subsidies, and the premise was that mass transit benefits principally middle income and upper middle income people. Do you really maintain that that is true?

Secretary LEWIS. Well, the statistics that we have received within the Department indicate that, in terms of the elderly and the disadvantaged, we are actually talking about 20 to 25 percent of our passengers. I can give you the statistics that were presented to me. I believe that is the correct figure.

Senator HEINZ. How about blue collar people and below median income?

Secretary LEWIS. We can give you the breakdown on that. The consensus we reached is that if you're concerned about specific programs for the elderly and the disadvantaged, there are better ways to help them than through mass transportation operating subsidies. That was the premise upon which our proposal was based, and I'll be glad to submit for the record.

[The following information was received for the record:]

TRANSPORTATION AND THE DISADVANTAGED

The reduction and phase out of operating subsidies is expected to impact principally middle income and upper middle riders. This point is illustrated by the following table which describes transit usage according to family income. In 1970, the median family income was $9,867 and roughly 35 percent of transit users were earning at or above the median income. The poverty level was $3,968 in 1970 and less than 28 percent of public transportation users earn below $5,000. Conservatively, over three-quarters of the nation's transit riders have incomes exceeding the poverty level.

Regarding specific programs for the elderly and disadvantaged, we believe that the transportation disadvantaged may be served in a number of ways. The following methods might be utilized:

Volunteerism can be employed to provide transportation particularly for low-income, elderly persons and severely disabled persons;

Coordination of social service agency transportation providers along with private and public transportation operators is another cost-effective method that local areas can utilize to transport low-income, elderly persons and handicapped persons;

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Ridesharing is primarily oriented for work trips but can deliver working handicapped and poor persons to job sites; and

User-side subsidies when applied to targeted groups such as severely handicapped or low-income persons rather than all transit users can reduce total subsidies and satisfy mobility needs.

Although mass transit subsidies tend to institutionalize transportation for elderly and low-income persons, travel by this segment of our population requires special programs which may need a separate sudsidy, a determination that should be made at the local level.

TRANSIT USAGE BY INCOME (1970)

Group	Income class			
	Below $5,000	$5,000–$9,999	$10,000–$14,999	$15,000 or more
All households in the United States, 1970 (percent)	28.4	30.9	23.0	17.6
Public transportation users (percent)	27.6	37.1	18.0	17.1

Source: "The Urban Transportation System: Politics and Policy Innovation" by Alan Altshuler, with James Womack and John Pucher (Cambridge: M.I.T. Press, 1979, pg. 273).

Senator HEINZ. And also people below median income, which are a large number of people.

Secretary LEWIS. That is correct.

Senator HEINZ. The other problem that the phaseout of operating subsidies causes is that it makes it much more difficult on certain areas of the country to come up with replacement revenues than other areas. If you are from Atlanta or from San Francisco or some of the growing Sun Belt areas, it is going to be much easier, given your tax base, to replace those revenues and, indeed, were everybody as in good shape as those areas, it would be very hard to defend the continuation of operating subsidies, maybe even for as long as the administration proposes.

But in the Northeastern United States, in States like Pennsylvania and other States, in fact, we not only lack that growth in our tax base, but there are a number of constitutional limitations on the local jurisdictions that are beginning to bite. For example, in Allegheny County, which includes the city of Pittsburgh, where the port authority transit operates, we are almost at the constitutional limit at this time. And PAT in Pittsburgh has had to raise fares twice this year to cover operating costs, and nearly all of the major transit systems in Pennsylvania have already had a major fare increase this year.

With these kinds of formal limitations on the tax base and practical limitations on how much further fare increases could increase without substantial losses in ridership, how do you suggest that these local communities adjust to the loss of operating funds?

Secretary LEWIS. Well, as I indicated earlier, the relative amount of our subsidization is not that significant, although I realize any amount is significant, when you are looking at mass transit. But I also understand the difference between Atlanta and Philadelphia and Pittsburgh. It is our judgment that by phasing, let's say over 5 years, the incremental difference in the fare box is not that significant, in relation to the total problem.

We also feel that there should be greater State support, for example, in Pennsylvania, for mass transportation. And greater regional support. I am much more familiar with the SEPTA system than I am the PAT system, but I feel there should be greater

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regional support in the Philadelphia area for that system, from an operating standpoint. Our feeling is, Senator, that if we're putting up 80 percent of the costs of the bus, and the State is putting up 16½ percent, it is not unreasonable for the local community, if they want that service, when they're purchasing a bus for 3½ percent, to supply the driver, the maintenance, and the fuel to keep that bus going.

We do feel that we have to come back at a later point with increased capital programs to upgrade the system. And it is perhaps a more philosophical point than anything, but we do feel that the Federal role should be focused on capital investment. And we are prepared to make recommendations in the future of increased capital investments in these systems; at the present time we need just to get the budget under control. We are trying to string out these capital projects over a period of time, and as you know, specifically as to the phaseout of operating assistance, we have skewed it to help the older established systems, rather than financing new starts or maintaining operating assistance levels for the systems that are less dependent on the Federal subsidies.

Senator HEINZ. Mr. Secretary, I think it is possible, and I think you have done so, to build a strong, philosophical case for concentrating on capital grants, and to the exclusion of operating assistance, but we live in a practical world. And I'm very concerned about the practical aspects of implementing what in a perfect world might seem a reasonable philosophy. Taking again the port authority situation, my recollection is that they receive roughly 13 or 14 percent of their budget from the Federal operating grants program. They raise, let's say, half of it—that might be a little lower, but half of it at the fare box.

The Federal termination, therefore, amounts to a 26-percent increase at the fare box, 13 percent on the existing 50 percent, in fact, that is at the fare box right now. That represents the 26-percent increase in fares. That is a pretty steep increase.

And I believe that that is the kind of problem we have to look at. If you just take the 13 percent or whatever the national average is by itself, that sounds pretty modest, but you realize, I know, that what is being paid for at the fare box is not the other 87 percent. So that you're not talking about a 13-percent increase in fares, you're talking about 15 or 20 or 25. And in cities in Pennsylvania such as Erie, Harrisburg, Allentown, Scranton, their operating subsidies are up to 30 percent from the Federal Government, because we have been encouraging them to get into the mass transit business. And so this will be even more disruptive of those smaller cities.

But here let me ask you about this. Is it not true that the older mass transit systems, the established ones are more expensive to run than the newer systems?

Secretary LEWIS. There is no question that that is correct.

Senator HEINZ. What is there in the President's program that takes that difference into account?

Secretary LEWIS. Well, first of all, as I say the operating subsidies are skewed to help the older established systems, and second, if you look at our capital programs——

Senator HEINZ. You're phasing those out.

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Secretary LEWIS. Yes, but in terms of the phaseout, the 26 percent you're talking about, there actually are no cuts in fiscal year 1981 and no cuts in 1982. As for our bus capital program, the authorizations are actually going to go up in 1982 rather than down, and then increase over 1983, 1984 and 1985. So we're talking about a 26-percent increase to be phased in over a 5-year period, which we don't think is unreasonable. And I might point out that we do feel that there are other sources of financial assistance.

And the thing we think we have to recognize is that, regardless of where the money comes from, it ultimately comes from the people, in terms of some kind of a tax. And it comes down almost to the same question we had in the highways program for rural and urban roads. We either collect it here, bring it back to Washington, deduct our overhead from it and send it back where it is collected in the local community, or it is collected and used locally.

REVENUE FROM LOCAL COMMUNITY

We feel that either through some type of a sales tax or some type of tax on the local community, that there should be sufficient revenue to support the local systems. We have made the effort, as I say, in terms of these older established systems, to phaseout the operating assistance over a longer period of time, with less incrementally being cut out in the third, fourth, and fifth year, which we think is important. And also in all of these cities we have not cut any of their capital projects presently underway. As a matter of fact, we are constantly reviewing with our discretionary funds, to final ways in which we can put money back into those communities.

Senator HEINZ. If you were saying that you are phasing out the operating subsidies more slowly in those areas that have older operating systems than those areas which have newer operating systems, your argument would be consistent.

Secretary LEWIS. That is correct.

Senator HEINZ. But you are not doing that. As I understand it, you are phasing out operating subsidies across the board and, therefore, it is very difficult for me to understand how your answer responds to the question, how the President's proposal takes into account that which you agreed to earlier, namely, that older transit systems are more expensive to run than newer systems.

Secretary LEWIS. No, in point of fact, we do have it skewed toward the established systems, as I indicated earlier, and we are doing exactly what I indicated. For example, in tier 1—and Art can explain this better than I perhaps we're phasing that out very rapidly, where in the larger cities we're keeping the same subsidy in tiers 2 and 3 from 1981 through 1984.

Senator HEINZ. This is in which program?

Secretary LEWIS. Our operating subsidies. In other words, while we are phasing out the operating assistance program, the newer systems and the smaller systems are being phased out much more promptly than the older systems, and actually we keep the subsidies in tier 2 level right through 1984. Could you describe that in more detail, Art?

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Mr. TEELE. Senator Heinz, we have taken two very pointed steps to lessen the impact of our phaseout on the older cities and the cities that you are expressing the concern about.

The first thing that we did is that all of our phaseout, which is not scheduled to begin until fiscal year 1983, is coming out of tier 1, which is based upon population and population density. That should be very, very clear, all of our one-third reductions—the three units of the one-third reduction—are coming out of tier 1. Tier 2 will remain constant at the $165 million level. Now 85 percent of tier 2 funds are reserved for those metropolitan areas of 750,000 population or more.

Senator HEINZ. Do you have a list of the areas in there?

Mr. TEELE. Yes, sir. We will be happy to provide that for the record.

[The following was received for the record:]

SECTION 5 TIER II APPORTIONMENT

Tier II Section 5 funding is apportioned among all 279 urbanized areas, however, 85 percent of the funds are set aside for areas with greater than 750,000 population. These areas are: New York, N.Y.-N.E.N.J., Los Angeles-Long Beach, Calif.; Chicago, Ill-Northwestern, Ind.; Philadelphia, Pa.-N.J.; Detroit, Mich.; San Francisco-Oakland, Calif.; Boston, Mass.; Washington, D.C.-MD-VA; Cleveland, Ohio; St. Louis, Mo.-Ill.; Pittsburg, Pa.; Minneapolis-St. Paul, Minn.; Houston, Tex.; Baltimore, Md.; Dallas, Tex.; Milwaukee, Wis.; Seattle-Everett, Wash.; Miami, Fla.; San Diego, Calif.; Atlanta, Ga.; Cincinnati, Ohio-Ky.; Kansas City, Mo.-Kan.; Buffalo, N.Y.; Denver, Colo.; San Jose, Calif.; New Orleans, La.; Phoenix, Ariz.; Portland, Oreg.-Wash.; San Juan, P.R.; Indianapolis, Ind.; Providence-Pawtucket-Warwick, R.I.-Mass.; Columbus, Ohio; and San Antonio, Tex.

Senator HEINZ. Is not San Francisco in there?

Mr. TEELE. Yes, sir, it is.

Senator HEINZ. Is that not a newer system, BART, the Bay Area Rapid Transit System, build practically entirely with Federal money?

Mr. TEELE. That is correct, sir. But we're speaking now of the urbanized areas versus the rail cities, and I will come to in discussing tier 3. But essentially, tier 2 becomes basically an exclusive club of the major cities, and all of the rail cities that we're talking about are members of that exclusive club, but there are others.

Secretary LEWIS. Most of those cities are the older established systems. I am sure you can find exceptions.

Senator HEINZ. Most are in there, but there are also some new systems.

Secretary LEWIS. There are some exceptions.

Mr. TEELE. That is correct. But let me make the second point about we have done, which has been a very conscious decision which Secretary Lewis alluded to before. And this is where the 1970, 1980 census is very important. We have chosen not to use the 1980 census data because, quite frankly, if we used the 1980 Census data, we would inject some 75 new urbanized areas into the program, and we would be splitting this pot with 75 new cities.

Senator HEINZ. I think your decision to use that, the 1970 data is commendable.

Mr. TEELE. Then in tier 3, which are your exclusive rail cities, we have also chosen deliberately to keep that level constant from fiscal year 1981 up to and including fiscal year 1984. In fiscal year 1985, all of the operating assistance, tiers 1, 2, and 3, would be

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eliminated. So, in effect, tier 2 and tier 3 remain constant and are not proportionately reduced. And that, of course, has the combined effect of providing a substantial offset to the cities that you are expressing interest in.

Senator HEINZ. I have taken more than my fair share of time, Mr. Chairman. Thank you very much.

Senator LUGAR. Thank you very much, Senator Heinz. I think the questions that the Senator has raised and your answers are critically important, and I would hope for the benefit of each member of the full committee that you would make explicit the tier 1, 2, and 3 memberships, and the specific proposals that are involved. Obviously, it is a complex matter. But at the same time, is of great interest, obviously, to members of the committee and Members of the Senate as a whole, and they are figures that we will all need to have for that debate and that markup.

[The following was received for the record:]

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Cities eligible for Section 5

Tier I, II, or III Funding

Tier I funding is apportioned amongst all 279 existing urbanized areas on the basis of population and population density. Tier II funding also is apportioned to all urbanized areas using those factors, however, 85% of Tier II funding is reserved for urbanized areas having greater than 750,000 population. Those 33 cities are:

New York, N.Y.-N.E.N.J.
Los Angeles-Long Beach, Calif.
Chicago, Ill-Northwestern,Ind.
Philadelphia, Pa.-N.J.
Detroit, Mich.
San Fransisco-Oakland, Calif.
Boston, Mass.
Washington, D.C.-MD-VA
Cleveland, Ohio
St. Louis, Mo.-Ill.
Pittsburgh, Pa.
Minneapolis-St. Paul, Minn.
Houston, Tex.
Baltimore, Md.
Dallas, Tex.
Milwaukee, Wis.
Seattle-Everett, Wash.
Miami, Fla.
San Diego, Calif.
Atlanta, Ga.
Cincinnati, Ohio-Ky.
Kansas City, Mo.-Kan.
Buffalo, N.Y.
Denver, Colo.
San Jose, Calif.
New Orleans, La.
Phoenix, Ariz.
Portland, Oreg.-Wash.
San Juan, P.R.
Indianapolis, Ind.
Providence-Pawtucket-Warwick, R.I.-Mass.
Columbus,Ohio
San Antonio, Tex.

In the absence of the mandated 85%/15% split, these larger cities would collectively receive approximately 70% of Tier II funds.

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Tier III funding is apportioned based upon fixed guideway route miles and commuter rail route miles and train miles. The areas having these types of service are:

Allentown, Pa.
Altanta, Ga.
Aurora-Elgin, Ill.
Baltimore, Md.
Boston, Mass.
Bridgeport, Conn.
Chattanooga, Tenn.
Chicago, Ill.
Cleveland, Ohio
Detroit, Mich.
Los Angeles-Long Beach, Calif.
Madison, Wis.
Minneapolis-St. Paul, Wis.
New Haven, Conn.
New Orleans, La.
New York, N.Y.-N.J.
Philadelphia, Pa.-N.J.
Pittsburgh, Pa.
Portland, Ore.
Providence-Pawtucket-Warwick, R.I.-Mass.
San Diego, Calif.
San Francisco, Calif.
San Jose, Calif.
Seattle-Everett, Wash.
Trenton, N.J-Pa.
Washington, D.C.
Wilmington, Del.
Reading, Pa.
Stamford, Conn.
Waterbury, Conn.
Norwalk, Conn.
Danbury, Conn.
Joliet, Ill.
Lowell, Mass.
Brockton, Mass.
Atlantic City, N.J.
Poughkeepsie, N.Y.

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DOWNWARD TURN IN TRANSIT RIDERSHIP

Senator LUGAR. Let me ask for a general overview of why over the past 40 years public transit has lost 70 percent of its ridership? Essentially, is this a secular problem or have their been some ups and downs in it, and what type of projections do you make, if this legislation in some form fairly close to what has been proposed, becomes law?

Mr. TEELE. The question has a built-in assumption that is essentially correct. There has been a downward turn in the ridership that began to level off in 1972–73, has made slight increases since then and has been holding constant in the current 2-year structure. The net impact though is that the ridership of transit is substantially reduced from the peak periods of the early 1930's and, of course, we attribute much of that loss to the automobile and the heavy reliance upon the automobile.

It should be indicated that during this period of this cycle, the period in the 1940's, there was a statistically significant increase and this increase in ridership which is rationalized, of course, by the world events of World War II and the transit industry being declared a necessary industry. And of course, after that came the increasing American reliance upon the automobile.

Our capital assistance program is designed to buttress the propensity that the marketplace is showing for an increase in ridership by continuing our bus replacement program at a constant level as set by previous administrations. In fact, this is one of the few areas in the entire administration budget in which we envision a slight increase in the years ahead.

Additionally, through our UMTA management and planning component we are adding greater emphasis on car pooling and van pooling, which, quite frankly, now does not reflect in the ridership data. Particularly in cities such as Washington, D.C., with the help of UMTA, we have dedicated lanes and contraflow lane technology deployed. We are looking at that in Houston also. We are making significant increases in other forms of quasi-public transit, but that data, of course, is not yet being reflected in our data system.

Senator LUGAR. You just mentioned at least in the past 6 years or so and maybe going back slightly more than that, since the OPEC crisis in 1973, and what have you, that ridership has been fairly flat. There was a jump, at least initially, and then things sort of tapered off.

What comment would you make about just looking at the local situation here in Washington, D.C., the latest statistics appear to indicate that the number of riders has gone down slightly in the past year. Why?

Ms. FORYST. Senator Lugar, I think you are perhaps referring to a recent announcement by the Washington Metro system that they had experienced a slight downturn in passengers. It is my recollection that when they made that announcement that they were unsure themselves why that had occurred. And we also are trying to figure that out.

Secretary LEWIS. In other words, we don't have an answer to your question.

Senator LUGAR. In any event, there seems to be no disagreement. We don't know the reason that fewer people are using the system,

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even in the midst of a very sharp increase in gasoline prices, for example. And very sharp increases in automobile purchase costs. The appreciation costs. What comment would you make in the midst of what has been a fairly flat ridership predicament over the past 6 years? What kind of increases in labor costs have been experienced by operations generally in the country, and have there been additional employees added to transit systems, even in the midst of what were at best rather flat prospects?

Secretary LEWIS. There have been significant increases, and Art can comment in more detail, which concerns us a great deal. That is one of the reasons we feel local communities should handle that rather than have a feeling that we know we can always come to the Federal Treasury to bail out the unsatisfactory labor negotiation. We are also concerned about the excess workers who are not required on these systems. We are experiencing difficulties now and we met with three operators yesterday, New Jersey, New York, and Philadelphia, about the transfer of the Conrail commuter systems to their systems, because of the work rules under Conrail. It is going to be almost impossible unless we have a change, and not be under the National Railway Act, to have any of these systems returned to the local communities. And, in point of fact, the productivity in the rail workers has actually gone down over this period of time.

So the incremental cost is not only their increase in salaries, but it is also the fact that we're not getting the productivity, because of the work rules under we're operating.

EIGHTY PERCENT OF SUBSIDIES ATTRIBUTED TO LABOR COST

Mr. TEELE. The point that we would like to make, that is embodied in the whole concept of operating subsidies, is that 80 percent of the total cost of operating subsidies can be attributed to labor cost. Now that is a significant statistic, and when we talk about the phaseout of operating subsidies, it must be couched in terms of the labor cost.

Mr. Chairman, we would like to provide you with a graph that shows a comparison of the labor cost in the transit industry versus those in comparable segments of the public sector, including police and fire workers, against the cost of living index. It can be clearly stated that the cost associated with labor cost in the transit industry have outstripped all comparable segments of the public sector industries, as well as the cost of living, at a significant statistical rate.

[The following was received for the record:]

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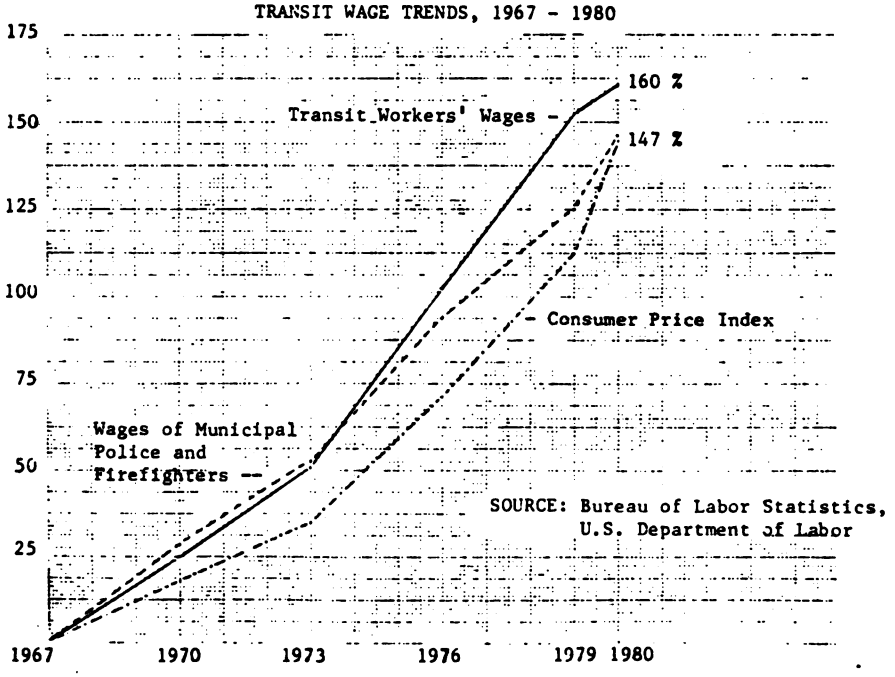
Transit Wage Trends: 1967 - 1980

As the accompanying graph illustrates, the unit cost of transit labor increased 160 per cent from 1967 to 1980. This rate of change exceeded the 147 per cent increase in the Consumer Price Index for the same period. Municipal fire and police wages increased at about the same rate as the Consumer Price Index. Thus, in the aggregate, transit labor cost increases have been in excess of both comparable municipal services and the general cost of living.

However, the evidence suggests that transit employees' salaries and their rate of increase are on a par with those of other public sector employees in cities of comparable size. In other words, transit is highly concentrated in high cost-of-living cities in which the prevailing wage structures exceed the national norm.



Prevailing wage rates and local cost-of-living notwithstanding, labor productivity in transit does not justify the rates of increase reflected in the graph. The adoption of restrictive work rules, the indexing of wages to changes in the cost of living, and poor management of labor have undermined productivity that otherwise would have supported and justified wage increases.

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Mr. TEELE. And returning to Senator Heinz' question as it relates to the offsetting operating subsidies, it can be clearly stated also, sir, that the greatest potential for offsetting operating subsidies will come about in a more thoughtful and efficient management of the existing systems rather than looking to additional sources of income initially or offsetting those subsidies at the fare box.

Senator LUGAR. Let me just comment, because you have made really a very important statement. If in fact the labor cost for transit has grown faster than for other public employees substantially and has grown faster than the rate of inflation, many persons in the public as a whole, in fact many Senators, may draw a conclusion that transit subsidies have caused this growth. Police and fire salaries have not gone up as rapidly because the Federal Government is not subsidizing policemen and firemen directly.

There has been Federal infusion of funds. Ridership has only grown slightly. Labor costs are 80 percent of local transit costs. Thus one could conclude that the Federal taxpayers have been subsidizing labor settlements at the local level.

Now, the gist of what you are saying is that the subsidies are going to come to an end and local officials will have to make their peace with the local labor unions without the Federal Government subsidizing the cost and simply offering the opportunity to pick up the tab and spread the largess so broadly that it was perhaps not noticed by taxpayers throughout the country who were subsidizing the cost. I think that honest men and women will differ on this subject, and we will hear testimony both ways, because those are being subsidized, I presume would prefer to have that subsidy continue.

Now you have offered testimony on transit fare increases which will occur in various cities, and the committee has received some testimony from expert witnesses with regard to this.

Senator Heinz has requested some information specifically in one of his questions, but my information is that in the event operating subsidies were eliminated according to the administration bill, in the city of Chicago there would be an 8-cent per year increase at the fare box. Is that too high? Too low? And Philadelphia, my information is it would be 18 cents per year at the fare box. That is cents as opposed to percent. But is there any calculation thus far on the part of either of those two cities or of others that would give us some ball park estimates of specifically what is going to happen?

Secretary LEWIS. We can give you a breakdown in terms of our estimate. First of all, I think we should not start out with the assumption that just because we reduce our subsidy, everything necessarily is going to come out of the fare box. There are great many other things to be considered, but I will get to that in a minute.

We can give you those figures. We have calculated that across the board over the 3 years of the phaseout the average increase will be 6 cents per year for a total of 18 cents.

[The following was received for the record:]

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page 42, line 10

FARE INCREASES NECESSARY TO REPLACE FEDERAL OPERATING SUBSIDIES

The 18 cent figure for Philadelphia and the 8 cent figure for Chicago represent a "worst case" estimate of the fare increases that would be necessary to replace Federal operating subsidies entirely with farebox revenues. These estimates are based on an extreme assumption-used for analytical purposes only - that transit systems attempt to recover the entire lost Federal share from the farebox. A more realistic estimate of what might happen to fares if Federal operating subsidies were phased out is based on the assumption that 50 percent of lost Federal subsidies would be recovered from the farebox and 50 percent would be recovered by increasing state and local subsidies. Fare increases for selected cities under both scenarios are summarized on the following table.

These assumptions in no way imply that localities should recover a certain percentage of lost Federal operating subsidies from the farebox. We expect localities to adopt a variety of strategies for coping with lost Federal operating subsidies. These strategies might include:

- fare increases, with greatest increase for long trips from suburbs
- cuts in marginally productive service,
- increased State subsidies,
- increased local subsidies,
- increased contributions from private enterprise,
- changes in work rules and labor contracts,
- management improvements, and
- private provision of public transportation services.

In some cities where the Federal share of operating expenses is high and the share covered by the farebox is low, it would not be possible to replace Federal subsidies with fare increases alone. These systems would have to respond to the phase-out of Federal assistance with strategies that mix the elements.

Because most systems are likely to pursue such multi-faceted strategies, it is likely that the actual fare increases resulting from the phase out of Federal subsidies would be smaller than the "worst cost" estimate shown on the table.

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Increase in Base Fare Necessary to Replace 100 Percent and 50 Percent Federal Operating Subsidies With Farebox Revenues in Selected Cities 1/

System	Current Base Fare	Base Fare Nec. to Replace 100% Fed. Assistance	Average Ann. Fare Increase through FY '85	Base Fare Nec. to Replace 50% Fed. Assistance	Average Ann. Fare Increase through FY '85
NYCTA (New York City)	60 cents	77 cents	4.3 cents	68.5 cents	2.1 cents
CTA (Chicago)	80 cents	$1.12	8 cents	96 cents	4 cents
SCRTD (Los Angeles)	65 cents	$1.19	13.5 cents	92 cents	6.8 cents
SEPTA (Philadelphia)	65 cents	$1.37	18 cents	97 cents	9 cents
WMATA (Washington)	60 cents	$1.27	16.7 cents	94 cents	8.4 cents
MBTA (Boston) - Bus	25 cents	43 cents	9 cents	34 cents	4.5 cents
MBTA (Boston) - Rail	50 cents	86 cents	4.5 cents	68 cents	2.3 cents
Metropolitan Dade County Transit Authority (Miami)	75 cents	$1.13	9.5 cents	94 cents	4.8 cents
TRIMET (Portland)	65 cents	96 cents	7.8 cents	81 cents	3.9 cents
BART (San Francisco)	50 cents	56 cents	1.5 cents	53 cents	.8 cents

1/ These estimates are based on revenue and expense data from the Section 15 Reporting System.

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Senator LUGAR. That's 18 cents for 3 years?

Secretary LEWIS. Yes. That is assuming nothing else happens and everything else comes from the fare box. We don't have a breakdown for every city in the country.

In New York City, we have calculated it to be 17 cents, and we can check on these other cities that you have asked about.

Senator LUGAR. That would be per year?

Secretary LEWIS. Seventeen cents total over 4 years in New York. They would actually get a Federal subsidy covering 9 percent of operating expenses in New York over 1983, 1984, and 1985, if nothing else happened. But here is the point, Senator, that we are trying to make. First of all, if we changed 13(c), if we modify the 504 requirements for the handicapped, if operators make some service adjustments, if there is an increase in either State support or local support, and if, most importantly, which Art Teele has indicated, there are some cost savings through some work rule changes and more stringent labor negotiations, then this changes the cost picture. We also feel that in general the relaxation of Federal regulatory burden, not having to fill out those reports that you indicated, will help.

I was talking to, as an example, Stan Crane on the Conrail system about the required reports and the benchmarks in that particular area. He said it will require 400 people just to file the reports that are going to be requested by Congress and the USRA. We think addressing this type of thing will ameliorate the need to require that 6-cent-per-year increase over the 3 years.

So we want to make it clear we don't accept the assumption that every reduction in the Federal subsidy for operations will necessarily end up in an increase in fares. We think it should not and feel that with proper management it will not.

Senator LUGAR. Well, that is very important testimony, because clearly the amounts of estimates range into all sorts of figures as to what would be required. We can take suppositions that some regulatory reform will occur, but the worst case at least that we just weren't able to make the efficiencies, you are testifying that 17 cents of increase of 3 years, that time would be the average.

Secretary LEWIS. That was New York. It was actually 6 cents per year or 18 cents over 3 years.

Senator LUGAR. Well, 17 cents for 3 years in New York City—that is a large system and one particular in the news.

SERVING THE HANDICAPPED

Let me ask one final question. We will hear testimony in our next hearing with regard to section 504. But would you respond to this general question? Can full accessibility on existing routes serve a majority of the handicapped? Some have argued for a local option. Some have argued for what is termed mainstreaming. Where does the Department come out and what sort of testimony will you give in this area?

Secretary LEWIS. We have a great concern that the handicapped are properly served in terms of mass transportation. We also feel, however, that to have a system mainstream may involve a tremendous economic burden. It is very clear, and many of the people, particularly in the Midwest and the northern areas, recognize that

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when you have a snowstorm or some problem, a retrofitted bus or some kind of a lift on a bus is of no service when a handicapped person can't get to the bus.

There are some communities that, through a computerized method of van service with every fifth or 10th bus having this particular type of facility, could properly serve this community adequately.

The problem we have in the Department of Transportation is that, to use New York as an example, it is virtually impossible for New York to retrofit its system, to really provide mainstreaming for the handicapped. It would bankrupt an already bankrupt system, if I could use that expression.

So we are trying very hard to convince the Congress that this should be a local option, that we will not have full accessibility even if we go to the mainstreaming concept, and that local option is a more satisfactory approach to this problem.

Senator LUGAR. Senator Heinz, do you have additional questions?

Senator HEINZ. I have one or two, Mr. Chairman.

EQUIPMENT MAINTENANCE

Mr. Secretary, in the legislation there is a section, section 101(a), which amends section 3 so that cities cannot get additional capital assistance unless they maintain their equipment. This sounds on its face reasonable enough. But if you take some of these smaller cities that are going to have their operating assistance phased out, I am somewhat concerned about the practical effect of this. The city that comes to mind most readily is Altoona which wonders what is exactly going to happen to this Juniata Shops under Conrail in any event. But this has nothing to do with Conrail.

Secretary LEWIS. I understand I am not too popular in Altoona.

Senator HEINZ. Well, this may heighten the same rating. [Laughter.]

Because some 52 percent of the operating cost of Altoona's budget comes from the Federal Government. When those funds are cut off it is hard to see how the Altoona Transit Authority can do anything other than to use maintenance funds to operate their system and this will render them, as I understand it, ineligible for capital grants. Is that true?

Secretary LEWIS. What we are really trying to do is reinforce the responsibility they already have to properly maintain their equipment. I think this is somewhat inconsistent in terms of our basic philosophy where we are trying to get rid of regulations, and yet in this case we are actually imposing them on the local communities. Our concern is this, Senator. When you put up 80 percent of the cost of a bus and the States put up 16½ percent, so the bus costs the local authority 3½ percent, the inclination is very frequently to put 100,000 miles on that bus instead of the 500,000 miles that should be put on it. What we are really trying to do is to protect the capital investment in this equipment and encourage the local communities to do a better job of maintenance.

We are reviewing to see in what areas of maintenance we could supply funds to local communities under our capital program. It likely would not be in bus maintenance, but perhaps in some other more capital intensive maintenance requirements.

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So we don't think this will increase their maintenance costs. We think it is actually something that they should be doing now in terms of prudent management. We do think it protects the Federal investment. We don't want buses that are only a fifth worn out turned in, for 3½ percent, to pick up a new bus.

Senator HEINZ. The issue, of course, is not whether the cutoff in operating assistance will increase maintenance costs. I didn't mean to give you that impression. I don't think you mean that either. The question is, what will happen in Altoona? Now, when I gave you the example you said that they would not be ineligible for capital grants, yet the statute or the section that I read would appear to render them ineligible for capital grants.

Secretary LEWIS. I was really responding as to the intent of our legislation and the purpose of the legislation. If local communities do not comply with an adequate maintenance program, that is the purpose of the provision.

Senator HEINZ. What should Altoona do?

Secretary LEWIS. I think Altoona and every other city should make an effort to maintain the capital equipment provided for it by the Federal Government, most significantly, and the State government.

Senator HEINZ. So they should look to increase their fare box revenues 100 percent?

Secretary LEWIS. Positively not. As I indicated earlier, there are a number of other ways that you can ameliorate that problem, some of it in maintenance, some of it management, some of it in labor negotiations. There are a number of options besides just going to the fare box, including the possibility of increased local and State support for these systems.

Would you want to comment further on that, Art?

Mr. TEELE. I would. I have reviewed the impact of our proposals on Altoona specifically. The phase-down is a very orderly phase-down. In terms of the numbers they are getting just under $1 million out of tiers 1, 2, 3, and 4, and the phase-down would be approximately $200,000 a year, and in 1985 they would still come up for about a third of a million dollars, $300,000.

But more specifically, Altoona is not being singled out. Any transit property that is drawing down in excess of 13 percent of their total operating section 5 funds for operating costs, then statistically they do have a problem, and the problem, of course, getting back to our original statement on this, is one that probably will be associated with labor and labor costs, and it is incumbent upon them to review those figures internally.

If in fact for Altoona our Section 5 funds represent 46 percent of their operating costs, then quite frankly Altoona and any other such city is in a very precarious situation because they have allowed the operating costs to virtually eat their system alive.

Senator HEINZ. Let me pick up on something the Secretary said.

Obviously, I doubt that it is anybody's intent, I doubt that it is your intent, Mr. Secretary, that this section should result in a bus that is supposed to be going 500,000 or 400,000 miles and end up, for whatever reasons, being cannibalized or maintained subpar because the authority is forced to do so just to keep the system

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operating, and yet it would seem that that might be a logical consequence of this for obvious reasons.

But I thought I heard you indicate that perhaps there might be more flexibility under the capital grants for maintenance purposes. Is that correct?

Secretary LEWIS. We are currently reviewing that issue. As a matter of fact, if there is a more satisfactory arrangement to accomplish what we want, in terms of seeing that equipment is properly maintained, that your committee would care to present or modify, we would be receptive. We came up with this concept because we just couldn't come up with an alternative which we felt would accomplish what we want to achieve.

Senator HEINZ. I am only one member of this committee, but let me urge you to pursue that line of thought.

Secretary LEWIS. We are doing that.

BUY AMERICAN

Senator HEINZ. I think that could be very useful.

I have one more inquiry regarding the administration's intention to retain the existing domestic preference language under UMTA. As I understand it, the administration does support the existing language for domestic preferences, Buy America, if you will. Is that correct?

Secretary LEWIS. That is correct.

Senator HEINZ. That is good, because thanks to the fact that we didn't have that language for a long time we are now down to one domestic manufacturer of rail cars. The one happens to be in Pennsylvania for the time being. But I hope we can have more firms, even if they are not in Pennsylvania.

Does the administration favor increasing the required percentage of U.S. content in the existing legislation which is currently 50 percent?

Secretary LEWIS. We have not suggested that the percentage be modified. It is currently 50 percent and we are recommending that it remain at the 50 percent level, and we did comment earlier, Senator, that we think this program has been successful. It has even attracted one Canadian manufacturer to open up a bus manufacturing facility in this country.

So we do think the provision is having the results that we would like to have it have.

Senator HEINZ. Given the fact that a recent Congressional Research Service study showed that for every $1,000 of U.S. source procurement by UMTA, or other Federal agencies, that some $552, 55 percent, an incredibly high figure, is returned in the form of increased Federal, State and local tax revenues, would the administration favor increasing the existing price differential in present law, which is 10 percent, to say 15 percent or something higher?

Secretary LEWIS. We have not considered that. In the legislation we are recommending that it remain at the 10 percent. We believe that we are accomplishing what we set out to do with the Buy America provisions as they are presently constituted.

Of the last eight rail car contracts every one has gone to an American manufacturer.

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Senator HEINZ. Yes. The biggest, most obvious problem was last year in Philadelphia where the Southeastern Pennsylvania Transit Authority was in a position where it had to let a contract to a Japanese light rail vehicle manufacturing firm with the one remaining light rail vehicle manufacturing firm being precluded from getting that work. They just had too high a differential to invoke the domestic preference statute.

Secretary LEWIS. What was that differential?

Senator HEINZ. I don't remember.

Secretary LEWIS. I know it was in excess of 10, but it seemed to me it was rather significant.

Senator HEINZ. It was.

Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Senator LUGAR. Thank you, Senator Heinz. Thank you, Mr. Secretary, and your associate, for coming this morning. We look forward to working with you.

Secretary LEWIS. Thank you very much for having us.

Mr. Teele has asked if we could have the opportunity to submit further documentation on the testimony we presented here.

Senator LUGAR. We would welcome that, and if you could provide as quickly as possible the answers that were left from earlier discussion we would appreciate that.

[Additional material received for the record follows:]

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STATEMENT OF

SECRETARY OF TRANSPORTATION DREW LEWIS

BEFORE THE

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

SENATE COMMITTEE ON BANKING,

HOUSING AND URBAN AFFAIRS

CONCERNING PROPOSED MASS TRANSIT LEGISLATION

MAY 15, 1981

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you this morning to discuss the Administration's proposed mass transportation legislation. I am accompanied by Art Teele, the Urban Mass Transportation Administrator.

We recognize that transit systems are an essential component of our overall transportation network. Our proposals are designed to use available Federal funds effectively to improve these systems, while removing the Federal Government from unnecessary involvement in day-to-day operational matters. Our proposals will result, I believe, in transit systems that continue to respond to the needs of our citizens but that do so more efficiently than today.

Before turning to the specifics of our legislative proposal, I should point out that the success of the President's Economic Recovery Program will be particularly critical for mass transit systems. So those of us who are concerned about transit are particularly gratified by the bipartisan recognition and support that both the Congress and your constituents have given to President Reagan's initiatives, which will curb inflation and halt the alarming escalation in Federal spending that has fueled inflation.

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The nation's transit industry feels the effects of inflation keenly. For one thing, the transit industry is very labor intensive. Wages are characteristically adjusted to the Consumer Price Index, in many cases quarterly. The General Accounting Office's recent report on Federal operating assistance attributes 64 percent of transit cost increases between 1973 and 1978 to general inflation. Since the oil embargo of 1973, transit revenues have failed to even remotely keep pace with costs. The GAO estimates that the nation's transit operating deficits, which totaled $2.2 billion in 1978, will exceed $6 billion a year by 1985.

I've come to you today to propose a different course of action -- a course of action that recognizes that the best way to ultimately help transit in this country is to control inflation. A course of action that recognizes a legitimate Federal role in support of mass transit -- and also recognizes that transit operations should remain primarily a local responsibility, free from undue Federal intrusion and not dependent on unwarranted Federal subsidy.

Let me turn to the specifics of our legislative proposal. This Administration believes that the most appropriate and productive role of the Federal Government in mass transit lies in supporting necessary capital investments. Without the availability of Federal capital assistance, it would be virtually impossible for communities to meet the large financial demands that capital projects periodically require. Federal capital assistance also allows orderly vehicle replacement programs which might otherwise be difficult given the fluctuations in local financial situations and the current constraints on many local budgets.

Therefore, we are proposing a strong and positive program for Federal capital assistance to the transit systems of this country. We intend to make

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available between $2.5 and $3 billion annually over the next four years for capital investments, including Interstate transfer funds. The Federal capital assistance program will focus primarily on the maintenance and improvement of existing, proven transit systems and on projects with near-term payoffs. We will emphasize the funding of bus and bus-related projects as well as rail modernization projects, and we will defer, certainly until the economy improves, any new construction of rapid rail systems.

I believe that Federal support for the purchase of equipment and vehicles carries with it a responsibility for localities to protect that investment with adequate maintenance programs. It doesn't make any sense for Federal tax dollars to be used to pay up to 80 percent of the price of a piece of equipment unless we can be sure that the equipment will be properly maintained. Therefore, our legislative proposal includes provisions to ensure that recipients of Federal funds have the capability to maintain transit equipment and facilities.

As you know, we propose to gradually phase out the Federal operating assistance program in a manner that is the least disruptive to local areas. I believe that state and local communities must be responsible for the operation of their mass transportation systems. Those levels of government have the greatest degree of flexibility to use innovative, creative approaches to solve their transit problems and meet their transit needs. Moreover, the issues surrounding operating subsidies are local rather than Federal -- issues such as fares, routes, wage rates and levels of service. Federal transit operating assistance invites a wide range of Federal intrusion into local decisionmaking. Why should the Federal Government be prescribing how decisions on fares are made?

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Why should a determination of service levels turn on the availability of Federal subsidies? We believe that the Federal Government has no business in those areas.

Obviously, this is a significant change in Federal policy. While Federal funds only make up 13 percent of total operating costs nationwide, localities have made their plans with the expectation of receiving this Federal aid. To allow localities enough time to adjust to the loss of Federal operating assistance, we also propose to phase out the program over a four-year period. Under our proposal, there would not be any reduction in the level of Federal operating assistance during Fiscal Year 1982. This is subject to change during the budget process, of course. During the phase out period, local governments, and probably state governments as well, can determine what level of service they want to provide and what combination of revenues and subsidies is needed to support that service.

We do not propose any change in the formula for distribution of the operating assistance funds. While the present formula could probably be improved, I do not believe it is worth the effort given that the program is being phased out. We do propose to continue use of the 1970 Census to identify the areas that are eligible for these operating assistance funds. It would be unwise to bring new areas into the program at the very time the program is being phased out, and we do believe that the available operating assistance funds should be focused where they are needed the most.

The Department is also undertaking an extensive review to eliminate costly and burdensome regulations, and this effort will help to offset the loss of Federal operating assistance. For example, the Department's

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Section 504 requirements for providing accessibility to disabled persons on mass transportation facilities has been troublesome to many communities. We think the regulation in its present form is an inordinate, inflexible burden on local communities. We believe each community should be able to decide for itself how best to meet the transportation needs of handicapped persons, either by making regular transit services accessible or by tailoring specialized transportation services to the needs of disabled individuals or through some combination which fits that particular community. Therefore, we have included in our legislation a provision which would allow localities to develop their own programs for providing transit service to handicapped persons, after considering the levels of services that are provided to the general public on the regular bus service. The localities would certify to the Secretary of Transportation that a locally developed program is or will be in place. That certification would constitute compliance with the requirements of section 504 and related laws.

In closing, Mr. Chairman, let me stress that our proposal represents a strong Federal commitment to maintaining viable mass transportation service in this country -- but that it is a commitment that recognizes that there must be definite limits to the Federal government's role in an issue that is clearly a local one. It is a commitment that recognizes the Federal Government has failed in the past few years to preserve local flexibility in decisionmaking and to minimize Federal intrusions in mass transit policy. In conclusion, we believe such a commitment restores the proper balance to the Federal/local partnership, while serving the best long term interests of mass transit in our nation.

Thank you Mr. Chairman. That concludes my prepared remarks. Mr. Teele and I would be pleased to respond to any questions you or the other Members may have.

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II

97TH CONGRESS
1ST SESSION

S. 1160

To amend the Urban Mass Transportation Act of 1964 to provide authorizations for appropriations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 11 (legislative day, APRIL 27), 1981

Mr. GARN (by request) (for himself and Mr. LUGAR) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To amend the Urban Mass Transportation Act of 1964 to provide authorizations for appropriations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Transit Assistance Act of
4 1981".

5 AMENDMENTS TO SECTION 3 CAPITAL GRANT PROGRAM

6 SEC. 101. (a) Section 3(a)(2)(A) of the Urban Mass
7 Transportation Act of 1964 (hereinafter referred to as the
8 "Act") is amended—

9 (1) by striking out "and" at the end of clause (i);

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1 (2) by striking out the period at the end of clause
2 (ii) and inserting in lieu thereof "; and"; and
3 (3) by adding at the end thereof the following:
4 "(iii) sufficient capability to maintain the
5 facilities and equipment.".
6 (b) The second sentence of section 4(a) of the Act is
7 amended by striking out "an amount equal to 80 per centum
8 of the net project cost" and inserting in lieu thereof "an
9 amount not to exceed 80 per centum of the net project cost".
10 (c) The first sentence of section 4(c)(3)(A) of the Act is
11 amended by striking "$1,600,000,000" and all that follows
12 down through and including the period at the end thereof and
13 inserting in lieu thereof the following: "$1,725,000,000 for
14 the fiscal year ending September 30, 1982; $1,615,000,000
15 for the fiscal year ending September 30, 1983;
16 $1,750,000,000 for the fiscal year ending September 30,
17 1984; $1,900,000,000 for the fiscal year ending September
18 30, 1985; and $2,000,000,000 for the fiscal year ending Sep-
19 tember 30, 1986.".
20 ADMINISTRATIVE EXPENSES
21 SEC. 102. Effective October 1, 1982, section 4(d) of the
22 Act is amended to read as follows:
23 "(d) There are authorized to be appropriated for admin-
24 istrative costs, including salaries and expenses necessary to

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1 carry out the functions of this Act, such sums as may be
2 necessary.".

3 RESEARCH AND TRAINING

4 SEC. 103. Effective October 1, 1982, section 4(f) of the
5 Act is amended to read as follows:

6 "(f) There are authorized to be appropriated to carry out
7 the purposes of sections 6, 10, and 11 of this Act aggregate
8 sums not to exceed $70,000,000 by September 30, 1982;
9 $145,000,000 by September 30, 1983; $225,000,000 by
10 September 30, 1984; $310,000,000 by September 30, 1985;
11 and $400,000,000 by September 30, 1986. Sums appropri-
12 ated under this subsection shall remain available until
13 expended.".

14 EMERGENCY REPAIRS

15 SEC. 104. Section 4 of the Urban Mass Transportation
16 Act of 1964 is amended by adding at the end thereof the
17 following new subsection:

18 "(j)(1) The Secretary is authorized, in accordance with
19 this subsection, to make capital grants to States and local
20 public bodies and agencies thereof on such expedited terms
21 and conditions as the Secretary shall provide, for repair or
22 replacement of public transportation equipment and facilities
23 which the Secretary finds have recently suffered serious
24 damage as the result of (A) a natural disaster over a wide

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1 area, or (B) a catastrophic occurrence from any cause, which
2 seriously disrupts scheduled public transportation services.
3 "(2) No funds shall be expended under this subsection
4 unless the Secretary has received an application from the
5 State or local public body, or agency, as the case may be,
6 and unless an emergency has been declared by the Governor
7 of the State and concurred in by the Secretary, except that if
8 the President has declared an emergency or a major disaster
9 within the meaning of the Disaster Relief Act of 1974 (Public
10 Law 93–288), concurrence of the Secretary is not required.
11 "(3) For fiscal years beginning after September 30,
12 1981, sums authorized to be appropriated by subsection
13 (c)(3)(A) are authorized to be used to carry out this subsec-
14 tion.".

15 AMENDMENTS TO SECTION 5 FORMULA GRANT PROGRAM

16 SEC. 105. (a) Section 5(a) of the Act is amended—
17 (1) by striking out paragraph (1)(B) and inserting
18 in lieu thereof the following:
19 "(B) There are authorized to be appropriated for the
20 purposes of this paragraph, $900,000,000 for the fiscal year
21 ending September 30, 1981; $850,000,000 for the fiscal year
22 ending September 30, 1982; $480,000,000 for the fiscal year
23 ending September 30, 1983; and $110,000,000 for the fiscal
24 year ending September 30, 1984.";

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1 (2) in paragraph (2)(B), by striking out "and" and
2 all that follows down through and including the period
3 at the end thereof and inserting in lieu thereof the fol-
4 lowing: "$165,000,000 for the fiscal year ending Sep-
5 tember 30, 1982; $165,000,000 for the fiscal year
6 ending September 30, 1983; and $165,000,000 for the
7 fiscal year ending September 30, 1984.";
8 (3) in paragraph (3)(B), by striking out "and" and
9 all that follows down through and including the period
10 at the end thereof and inserting in lieu thereof the fol-
11 lowing: "$90,000,000 for the fiscal year ending Sep-
12 tember 30, 1982; $90,000,000 for the fiscal year
13 ending September 30, 1983; and $90,000,000 for the
14 fiscal year ending September 30, 1984."; and
15 (4) in paragraph (4)(B), by striking out "and" and
16 all that follows down through and including the period
17 at the end thereof and inserting in lieu thereof the fol-
18 lowing: "$375,000,000 for the fiscal year ending Sep-
19 tember 30, 1982; $400,000,000 for the fiscal year
20 ending September 30, 1983; $450,000,000 for the
21 fiscal year ending September 30, 1984; $500,000,000
22 for the fiscal year ending September 30, 1985; and
23 $550,000,000 for the fiscal year ending September 30,
24 1986.".

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1 (b) Sections 5(a)(1)(A)(i), 5(a)(2)(A)(i)(1), and
2 5(a)(2)(A)(ii)(1) of the Act, are amended by striking out "as
3 shown by the latest available Federal census" and inserting
4 in lieu thereof "as shown by the 1970 Federal census".
5 (c) Section 5(a)(4)(A) of the Act, is amended by striking
6 out the second sentence and inserting in lieu thereof the fol-
7 lowing: "The apportionments shall be made in accordance
8 with the population and population density formula set out in
9 subsection (a)(1)(A) and shall be calculated using the latest
10 available Federal census.".
11 (d) Section 5(b) of the Act is amended by adding at the
12 end thereof the following:
13 "(3) The Governor may transfer an amount of the
14 State's apportionment under paragraph (2) to supplement
15 funds apportioned to the State under section 18(a) of this Act
16 for the purposes of section 18. The Governor may transfer an
17 amount of the State's apportionment under section 18(a) to
18 supplement funds apportioned to the State under paragraph
19 (2). Amounts transferred shall be subject to the capital and
20 operating assistance limitations applicable to the original ap-
21 portionment of such amounts. Amounts transferred after Sep-
22 tember 30, 1982, to supplement the State's apportionment
23 under section 18(a) shall be utilized only for construction
24 projects.".
25 (e) Section 5(c)(4) of the Act is amended—

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1 (1) by inserting "(A)" before "Sums";

2 (2) by designating the second sentence as subpar-
3 agraph (B), and by striking out "Any" and inserting in
4 lieu thereof "Prior to September 30, 1983, any"; and

5 (3) by adding at the end thereof the following:

6 "(C) After September 30, 1983, any amounts remaining
7 unobligated by the Secretary at the end of such period or
8 which are deobligated by the Secretary after the end of such
9 period shall be added to the amount available for apportion-
10 ment under section 5(a)(4).

11 "(D) Apportionments for fiscal year 1975 shall be
12 deemed to have lapsed on September 30, 1977, and appor-
13 tionments for fiscal year 1976 shall be deemed to have lapsed
14 on September 30, 1978.".

15 (f) Section 5(d)(1) of the Act is amended by adding at
16 the end thereof the following: "The Secretary shall not ap-
17 prove a project for the payment of operating expenses after
18 September 30, 1984.".

19 (g) Section 5(g) of the Act is amended—

20 (1) by striking out "and" at the end of clause (1);

21 (2) by striking out the period at the end of clause
22 (2) and inserting in lieu thereof "; and"; and

23 (3) by adding at the end thereof the following:

24 "(3) sufficient capability to maintain the facilities
25 and equipment.".

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1 (h) Section 5(i)(3) of the Act is amended to read as
2 follows:
3 "(3) assurances satisfactory to the Secretary that
4 any public mass transportation system receiving oper-
5 ating assistance under this section has a locally devel-
6 oped process to solicit and consider public comment
7 prior to raising fares or reducing transit service.".
8 (i) Section 5(m) of the Act is repealed and section 5(n) is
9 redesignated as section 5(m).

10 OPERATING COSTS FOR UNIVERSITIES

11 SEC. 106. Section 11 of the Act is amended by striking
12 out subsection (b) and by striking out "(a)" immediately fol-
13 lowing: "SEC. 11.".

14 FEDERAL PROCUREMENT FACTORS

15 SEC. 107. Section 12(b) of the Act is amended by strik-
16 ing out subsection (b)(2) and by striking out "(1)" immediate-
17 ly following "(b)".

18 LOCAL OPTION FOR TRANSIT FOR THE HANDICAPPED

19 SEC. 108. (a) Section 16 of the Act is amended by
20 adding at the end thereof the following:
21 "(d)(1) A recipient of funds under this Act may certify
22 to the Secretary that (A) a program is in operation, or will be
23 in operation within one year after the effective date of this
24 subsection, and (B) the program meets the provisions of para-
25 graph (2). The Secretary shall accept such certification and

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1 such program shall be deemed to constitute compliance with
2 the requirements of all Federal laws as they relate to the
3 transportation of handicapped persons.
4 "(2) A program under this subsection must—
5 "(A) contain locally developed criteria for provid-
6 ing service to handicapped persons with respect to
7 fares, frequency of service, hours of service, restric-
8 tions on trip purpose, advance request time, waiting
9 lists, trip time, transfer frequency, and geographic area
10 of service;
11 "(B) be developed using a public hearing and
12 comment process that addresses the factors set forth in
13 subparagraph (A) as they compare to the bus service
14 that the recipient provides to the general public;
15 "(C) provide service that meets the locally devel-
16 oped criteria; and
17 "(D) provide that if a handicapped person wishes
18 to use any transit service provided by the recipient,
19 and is able to use that service without additional modi-
20 fications, then the recipient shall not exclude from or
21 otherwise discriminate against such person in connec-
22 tion with such service. A program certified by the re-
23 cipient under this subsection may provide service limit-
24 ed to those handicapped persons incapable of using the
25 recipient's regular transit service.

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1 "(3) The recipient shall request that approval be with-
2 drawn when it is no longer providing service that complies
3 with the requirements of paragraph (2).
4 "(4) The Secretary shall not impose any requirements
5 under this subsection which are in addition to those set forth
6 above.
7 "(e) Notwithstanding any other provision of Federal
8 law, a recipient of funds under this Act may not be required
9 to—
10 "(1) retrofit any bus for which a solicitation was
11 issued on or before the effective date of this subsection
12 to provide for wheelchair users; or
13 "(2) retrofit any usable segment of a fixed
14 guideway system open to revenue service on or before
15 May 31, 1976, to accommodate handicapped persons.".
16 (b) Not later than three years after the date of enact-
17 ment of this section, the Secretary shall provide a report to
18 the Congress concerning the implementation of subsection
19 (a), the compliance by recipients with its provisions, and the
20 service being provided by recipients to handicapped persons.
21 AMENDMENTS TO FORMULA GRANTS FOR NONURBANIZED
22 AREAS
23 SEC. 109. (a) The second sentence of section 18(a) of
24 the Act is amended—

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1 (1) by inserting "by the 1970 Federal census for
2 fiscal years ending on or before September 30, 1982,
3 and" after "as shown"; and
4 (2) by striking out the period at the end thereof
5 and inserting in lieu thereof "for fiscal years ending
6 after September 30, 1982.".
7 (b) The second sentence of section 18(c) of the Act is
8 amended by striking out "including" and all that follows
9 down through and including the period at the end thereof and
10 inserting in lieu thereof the following: ", except that no sums
11 apportioned by the Secretary after September 30, 1982, shall
12 be used for the payment of operating expenses or costs in-
13 curred under purchase of service agreements.".
14 (c) The first sentence of section 4(e) of the Act is
15 amended by striking out "and" and all that follows down
16 through and including the period at the end thereof and in-
17 serting in lieu thereof the following: "$75,000,000 for the
18 fiscal year ending September 30, 1982; $75,000,000 for the
19 fiscal year ending September 30, 1983; $75,000,000 for the
20 fiscal year ending September 30, 1984; $75,000,000 for the
21 fiscal year ending September 30, 1985; and $75,000,000 for
22 the fiscal year ending September 30, 1986.".
23 INTERCITY BUS TERMINALS AND OPERATING EXPENSES
24 SEC. 110. Sections 21 and 22 of the Act are repealed.

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1 WATERBORNE TRANSPORTATION DEMONSTRATION
2 PROJECT

3 SEC. 111. Section 320(b) of the Surface Transportation
4 Assistance Act of 1978 (Public Law 95-599) is amended by
5 adding at the end thereof the following: "No funds are au-
6 thorized to be appropriated to carry out the provisions of sub-
7 section (a) after September 30, 1981.".

8 REPEAL OF SAFETY AUTHORITY

9 SEC. 112. Section 107 of the National Mass Transpor-
10 tation Assistance Act of 1974 (Public Law 93-503) is re-
11 pealed.

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Senator LUGAR. The Chair would now welcome the distinguished panel of Mayor Wilson, William Oliver, Kenneth Slapin, and Leonard Ronis, and their associates.

Gentlemen, we are grateful to you for coming this morning, most of you from very, very substantial distances, for the benefit of the panel, and our staff, and those who are witnessing this hearing.

Let me mention now the members of the panel, to make certain that you are all here, as I have the list.

First of all, the Honorable Lionel Wilson, mayor of the city of Oakland, Calif., is here representing the United States Conference of Mayors. And I would add, Mayor Wilson, that our colleague, Senator Allen Cranston of California, asked me to give you an especially warm welcome this morning. He had a conflict of schedule and would have liked to have been a part of this hearing; but certainly he joins us in giving you a warm welcome. So, we appreciate your coming.

I would like to also welcome the Honorable William Oliver, Commissioner of Dade County, Fla., representing the National Association of Counties.

And we welcome the Honorable Kenneth Slapin, councilman from Norwalk, Conn.; chairman of the Transportation and Communications Steering Committee of the National League of Cities. Councilman, thank you for coming this morning.

And Leonard Ronis, the general manager of the Greater Cleveland Regional Transit Authority, and president of the American Public Transportation Association.

Accompanying you are three colleagues: Eugene Barnes, chairman of the Chicago Transit Authority; John Pingree, general manager of the Salt Lake City Transit Authority; and William Blue, general manager of the Transit Authority of Flint, Mich.

Gentlemen, we appreciate very much your coming. Let me ask that we proceed in the order of introductions. That is, with Mayor Wilson, then Commissioner Oliver, then Mr. Slapin, then Mr. Ronis, and other comments that his associates might have.

If you could try to limit your comments, maybe, to a maximum of 10 minutes, this would be very helpful.

We will proceed through the panel, and then Senator Heinz and I will ask questions of you, unless you have a time limitation, Senator Heinz.

Would you please proceed with your testimony, Mayor Wilson.

STATEMENT OF LIONEL WILSON, MAYOR, CITY OF OAKLAND, CALIF., REPRESENTING THE U.S. CONFERENCE OF MAYORS

Mayor WILSON. Mr. Chairman and members of the committee, having spent 16 years on the bench, I learned during that service that we lawyers have a propensity for verbosity. And with your indulgence, therefore, I will stick to the prepared script, in the interest of time, and ask that my prepared remarks also be made a part of the record.

Mr. Chairman and members of the subcommittee, I am Lionel Wilson, mayor of the city of Oakland. I am here this morning on behalf of the U.S. Conference of Mayors, which is composed of the Nation's principal cities. Within the conference, I serve as chairman of the subcommittee on public transportation.

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The conference is pleased to present our views to this subcommittee this morning. This subcommittee invented the public transportation program, and we have been proud to work with every single member of it from the start. We are even prouder that mayors sit at the top of this subcommittee and this full committee. We want to move together with you to reauthorize the public transportation program.

Mr. Chairman, for the last several months, public transportation has been on a fast track—and that's good. The administration has swiftly proposed reauthorization—and we commend Secretary Lewis for it. And this subcommittee has quickly provided a forum for a frank discussion on where this program should go.

The conference has upheld its end of the partnership. We have been engaged in a wide range of meetings and analyses to help us all in the public transportation policy development process.

In late March, we convened a special meeting in Atlanta, attended by cities accounting for over 95 percent of U.S. transit ridership, as well as the majority and minority staff of this subcommittee. The results of that meeting, the "Outline of Principles" is attached to my statement for your review.

Mr. Chairman, as our "Principles" indicates, for cities the dominant public transportation issues relate to the capital and operating areas. But cities also care a great deal about regulatory issues.

The conference has long supported a legislative remedy to give local governments the option to set up alternative transit services for handicapped citizens. The administration's proposal does just that.

But, in compromises worked out in the past, the conference has also supported guidelines on comparability within legislation. We have done this not because mayors like guidelines; we don't. We did it because it was a fair deal for the handicapped community to have the assurance of standards in the legislation, in the place of full accessibility.

The administration thinks otherwise. Local option is the priority. That has been achieved in the administration's bill. In the coming months, the Conference of Mayors hopes that we can finally achieve the local option goal, but do better by our handicapped citizens.

One important note: As the local option becomes a reality, the cost to cities to establish and expand alternative transportation systems will become an increasing burden on overall operating costs. That's an important concern we have with respect to the operating assistance program which we will review shortly.

The administration has proposed no change in section 13(c) labor standards provision of the public transportation law.

That makes sense to us. There are ongoing discussions between the Departments of Transportation and Labor to make certain that while labor protection is sustained, the provisions of the act are administered as efficiently as possible.

For our part, the conference has long been on record for this kind of administrative reform. We are hopeful that in the near future, both Departments can announce their agreement regarding such issues as speed of certification, consistency with local labor practices, and the ability to contract out for certain services.

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OPERATING ASSISTANCE PROPOSAL CREATES CONCERN

Mr. Chairman, as you know, the administration's operating assistance proposal has created considerable concern in cities all across the country. The administration noted, in the letter transmitting its bill, that "Primary responsibility for operation of mass transportation should rest with State and local governments."

It does now. The conference wants the subcommittee to be fully aware of the scope and extent of local leadership in public transportation finances.

That's why we undertook the analysis attached to my statement, for your review: "Transit Financing: The Record and the Views of the Nation's Mayors," based on information from the mayor's office in virtually every major metropolitan area. It is compelling information. It tells us that:

Sixty-two percent of the cities currently contribute some local funds to transit, despite the fact that in almost 80 percent of the cities, the transit agency is not a formal part of city government;

Almost half of the cities responding reported they have State or local tax sources earmarked specifically for transit capital and/or operating funds. Twenty-one more said they are planning to establish such a tax within the next 2 years;

Sixty-six percent—two-thirds—of the cities responding reported fare increases during the first 9 months of 1980; between 1979 and the first 9 months of 1980, 80 percent of the systems reported they have had a fare increase; and

When asked to rank in priority 10 local transit financing issues, mayors gave highest priority to developing new local tax revenues.

Separately, the conference has surveyed 100 cities on the impact of eliminating transit operating assistance after 1984. Here's what those cities say:

Elimination of transit operating assistance—the urban impact on cities will be: 46 percent will face substantial fare increases; 20 percent will face moderate fare increases; 65 percent will suffer significant ridership decreases; and 57 percent will reduce services.

Mr. Chairman, what this wealth of information tells us is that—

The Nation's cities are spending local resources, taxing their citizens, and raising fares to support public transportation.

This support is at an all-time high level—and it is growing.

This commitment goes beyond—far beyond—the relatively small amount of Federal funding now available to cities. But a Federal role in transit financing will continue to be an important element in the Federal/State/local partnership that keeps transit alive.

And finally, if the Federal Government seeks to assist localities in the public transportation field, that assistance must be as diverse as the cities themselves.

Mr. Chairman, three points from our Atlanta "Principles" are particularly important:

The operating assistance program must be saved in some form;

It should be made a better program; and

Cities desire to share the burden of developing alternatives.

We take this seriously. For weeks we have been struggling, with many others, to fashion the outlines of an alternative. The Conference of Mayors comes to you today not to argue against the admin-

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istration's bill, but to argue for consideration of alternatives—and for time.

Today, in UMTA, we have a capital program and an operating program. The capital program helps to pay for rail modernization, bus and bus facilities purchases, and new rail starts. The operating program helps to pay for bus and rail costs.

ELIMINATE OPERATING PROGRAM

The administration proposes to eliminate the operating program, seeking to "redirect the Federal role by reducing intrusion into decisions that could better be made by individuals, businesses, and State and local governments." That's a good goal. But by restricting the UMTA program to capital only, it is diluted. Alternatives deserve a look.

The administration's goals do not have to be accompanied by the difficulties predicted by the Nation's cities. This subcommittee could choose another path—the kind that makes sense to mayors.

The boundaries of the existing programs could be totally broken down and reassembled into an effective, streamlined block grant configuration. A block grant can guarantee flexibility at the local level, with assurance at the national level that the Federal dollar is spent wisely.

This block grant could include three basic elements: a bus program, composed of the old bus capital and bus operating assistance program; a rail program, composed of the old rail modernization capital and fixed guideway operating assistance program; and a discretionary program for the various construction and major investments as funds become available.

The bus and rail programs would be distributed by formulas based on factors relevant to those modes. Within each program, funds would be used by cities for capital and operating along broad Federal guidelines, such as the community development block grant program.

Mr. Chairman, when it comes to the public transportation program, the Conference of Mayors has no monopoly on new ideas. But we do want to be helpful and constructive. In this business, ideas take a little bit of time. We have already met, or will soon, with the staff of every member of the full committee, for the purposes of reviewing the block grant idea, and many other ideas as well.

We are hopeful that the subcommittee will permit all of us the privilege of time to work out the different alternatives which meet or exceed the administration's and subcommittee's standards of acceptability and excellence. We ask you not to proceed to mark up this important legislation for a several-week period, to give all of the interests the opportunity to develop an alternative consensus approach.

We seek delay not for its own purpose, but as an interval to help you produce a public transportation bill of which we can all be proud.

Mr. Chairman, the U.S. Conference of Mayors thanks you for this hearing. We would be pleased to answer whatever questions the subcommittee may have.

[Complete statement follows:]

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UNITED STATES CONFERENCE OF MAYORS

STATEMENT OF

THE HONORABLE LIONEL WILSON
MAYOR, CITY OF OAKLAND

Mr. Chairman and members of the Subcommittee, I am Lionel Wilson, Mayor of the City of Oakland. I am here this morning on behalf of the U.S. Conference of Mayors which is composed of the nation's principal cities. Within the Conference, I serve as Chairman of the Subcommittee on Public Transportation.

The Conference is pleased to present our views to this Subcommittee this morning. This Subcommittee invented the public transportation program and we have been proud to work with every single member of it from the start. We are even prouder that Mayors sit at the top of this Subcommittee and this full Committee. We want to move together with you to reauthorize the public transportation program.

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a special meeting in Atlanta, attended by cities accounting for over 95 percent of U.S. transit ridership, as well as the majority and minority staff of this Subcommittee. The results of that meeting, the Outline of Principles is attached for your reivew.

The Regulatory Issues

Mr. Chairman, as our Principles indicate, for cities the dominant public transportation issues relate to the capital and operating areas. But cities also care a great deal about regulatory issues.

Transportation for the Handicapped. The Conference has long supported a legislative remedy to give local governments the option to set up alternative transit services for handicapped citizens. The Administration's proposal does just that. But, in compromises worked out in the past, the Conference has also supported guidelines on comparability within legislation. We have done this not because Mayors like guidelines -- we don't. We did it because it was a fair deal for the handicapped community to have the assurance of standards in the legislation in the place of full accessibility. The Administration thinks otherwise. Local option is the priority. That has been achieved in the Administration's bill. In the coming months, the Conference of Mayors hopes that we can finally achieve the local option goal -- but do better by our handicapped citizens.

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One important note: As the local option becomes a reality, the cost to cities to establish and expand alternative transportation systems will become an increasing burden on overall operating costs. That's an important concern we have with respect to the operating assistance program which we will review shortly.

Section 13(c) and the Cities. The Administration has proposed no change in Section 13(c) labor standards provision of the public transportation law. That makes sense to us. There are ongoing discussions between the Departments of Transportation and Labor to make certain that while labor protection is sustained, the provisions of the act are administered as efficiently as possible. For our part, the Conference has long been on record for this kind of administrative reform. We are hopeful that in the near future, both Departments can announce their agreement regarding such issues as speed of certification, consistency with local labor practices, and the ability to contract out for certain services.

The Administration's Operating Assistance Proposal

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It does now! The Conference wants the Subcommittee to be fully aware of the scope and extent of local leadership in public transportation finances. That's why we undertook the analysis attached for your review, Transit Financing: The Record and the Views of the Nation's Mayors, based on information from the Mayor's office in virtually every major metropolitan area. It is compelling information. It tells us that:

- 62 percent of the cities currently contribute some local funds to transit, despite the fact that in almost 80 percent of the cities, the transit agency is not a formal part of city government;

- Almost half of the cities responding reported they have state or local tax sources earmarked specifically for transit capital and/or operating funds. 21 more said they are planning to establish such a tax within the next two years;

- 66 percent -- two-thirds -- of the cities responding reported fare increases during the first nine months of 1980; between 1979 and the first nine months of 1980, 80 percent of the systems reported they have had a fare increase; and

- When asked to rank in priority 10 local transit financing issues, Mayors gave highest priority to developing new local tax revenues.

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Here's what those cities say:

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ELIMINATION OF TRANSIT OPERATING ASSISTANCE:
THE URBAN IMPACT
(percent of cities responding)

- 46 percent will face substantial fare increases
- 20 percent will face moderate fare increases
- 65 percent will suffer significant ridership decreases
- 57 percent will reduce services

Mr. Chairman, what this wealth of information tells us is that:

The nation's cities are spending local resources, taxing their citizens and raising fares to support public transportation.

This support is at an all time high level -- and it is growing.

This commitment goes beyond -- far beyond -- the relatively small amount of federal funding now available to cities. But a federal role in transit financing will continue to be an important element in the federal/state/local partnership that keeps transit alive.

And, finally, if the federal government seeks to assist localities in the public transportation field, that assistance must be as diverse as the cities themselves.

Towards Reauthorizing the Public Transportation Program

Mr. Chairman, three points from our Atlanta Principles are particularly important:

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- The operating assistance program must be saved in some form;
- It should be made a better program;
- Cities desire to share the burden of developing alternatives.

We take this seriously. For weeks we have been struggling, with many others, to fashion the outlines of an alternative.

The Conference of Mayors comes to you today not to argue against the Administration's bill; but to argue for consideration of alternatives -- and for time.

What We Have Now. Today, in UMTA, we have a capital program and an operating program. The capital program helps to pay for rail modernization, bus and bus facilities purchases, and new rail starts. The operating program helps to pay for bus and rail costs. The Administration proposes to eliminate the operating program, seeking to "redirect the federal role by reducing intrusion into decisions that could better be made by individuals, businesses and state and local governments." That's a good goal. But by restricting the UMTA program to capital only, it is diluted. Alternatives deserve a look.

What We Could Have. The Administration's goals do not have to be accompanied by difficulties predicted by the nation's cities. This Subcommittee could choose another path -- the kind that makes sense to Mayors.

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The boundaries of the existing programs could be totally broken down and reassembled into an effective, streamlined block grant configuration. A block grant can guarantee flexibility at the local level with assurance at the national level that the federal dollar is spent wisely. This block grant could include three basic elements: 1) a bus program, composed of the old bus capital and bus operating assistance program; 2) a rail program composed of the old rail modernization capital and fixed guideway operating assistance program, and; 3) a discretionary program for the various construction and major investments as funds become available. The bus and rail programs would be distributed by formulas based on factors relevant to those modes. Within each program, funds would be used by cities for capital and operating along broad federal guidelines, such as the Community Development Block Grant Program.

The Next Steps. Mr. Chairman, when it comes to the public transportation program the Conference of Mayors has no monopoly on new ideas. But we do want to be helpful and constructive. In this business, ideas take a little bit of time. We have already met, or will soon, with the staff of every member of the full Committee for the purposes of reviewing the block grant idea and many other ideas as well.

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We are hopeful that the Subcommittee will permit all of us the privilege of time to work out the different alternatives which meet or exceed the Administration's and Subcommittee's standards of acceptability and excellence. We ask you not to proceed to markup of this important legislation for a several week period to give all of the interests the opportunity to develop an alternative consensus approach.

We seek delay not for its own purpose, but as an interval to help you produce a public transportation bill of which we can all be proud.

Conclusion

Mr. Chairman, the U.S. Conference of Mayors thanks you for this hearing. We would be pleased to answer whatever questions the Subcommittee may have.

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UNITED STATES CONFERENCE OF MAYORS
1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE: (202) 293-7330

April 1, 1981

CITIES AND TRANSPORTATION: The 1981 Agenda

Outline of Principles

The nation's cities met in Atlanta on March 26-27, 1981 to develop principles to guide the U.S. Conference of Mayors in working towards reauthorization of public transportation and highway programs.

The meeting was led by Mayor Maynard Jackson, Chairman of the U.S. Conference of Mayors Transportation Committee. Cities in attendance included:

New York City	Seattle	Tampa
Chicago	Kansas City, MO	Sacramento
Philadelphia	Pittsburgh	Richmond
Dade County	Nashville	Dayton
Baltimore	Atlanta	Salt Lake City
Indianapolis	Cincinnati	Las Vegas
Washington, D.C.	Portland, OR	Macon
Memphis	Minneapolis	Duluth
San Francisco	Louisville	St. Louis Park
Boston	Tucson	Carson City
Cleveland	St. Paul	

Cities present in Atlanta account for over 95 percent of 1980 public transportation ridership.

The meeting was also attended by representatives of the Reagan Administration, the House Committee on Public Works and Transportation, the Senate Committee on Banking, Housing and Urban Affairs and the Senate Committee on Environment and Public Works.

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Background

Cities are the common denominator in the national transportation system. The federal, state and local partnership which has enabled that system to function well must be enhanced and sustained. Arbitrary abandonment of critical elements of the system will fully diminish the system itself.

It is within that context that the nation's cities met to review with the representatives of the Administration and the Congress prospects for reauthorization of key urban transportation programs. A high degree of consensus was reached which is summarized in the sections which follow.

Public Transportation Operating Assistance

The Reagan Administration has proposed that public transportation operating assistance be phased out over the next two years and eliminated by fiscal year 1985. The cities are unanimous in their opposition to this proposal, and are heartened by indications that it has been received with little enthusiasm in the Congress. Virtually every city in attendance was forthright and clear on the dramatic impact of this proposal on public transportation in their cities. Federal operating assistance is only part of an overall transit financing package. But it is an important part. And, as the recent U.S. Conference of Mayors study has indicated, cities are now doing close to the maximum in raising fares, taxing themselves and providing local revenues to fund transit. In the future, they will do even more. There is ample justification for improving and refining the federal role in operating assistance. But no federal role at all should not be an option. The concensus on operating assistance is built upon several major points including:

- The operating assistance program must be saved in some form;
- It should be made a better program by being reformed to target funds based on actual transit service. Last year's legislation, stalled in the lameduck session would have begun this long overdue transition;
- Cities will take the burden of thorough examinations of alternatives to the existing structure and form of the operating assistance program. Basing a future program on maintenance costs is one such option we intend to explore.

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The Public Transportation Capital Program

The Reagan Administration has proposed legislation which would provide little growth in the transit capital program over the next several years. In addition, it has proposed a policy of no new rail starts or extensions. Mayors, who are responsible for balancing budgets in their own cities, are understanding of the need to stretch out or defer certain federal capital transit investments. However, policy should not call for their halt Nor should it fail to provide for assistance to keep certain programs going in this interim period prior to federal funding becoming available This is the heart of the cities consensus on capital expenditures which includes these key provisions:

- A policy of deferring new start construction is one that can be understood given the current conditions of the budget. A policy of no new starts cannot be accepted by the nation's cities;

- While new start construction is deferred, appropriate funds must be available to keep needed projects alive with such critical activities as planning and preliminary engineering;

- In the overall federal transit capital program, no modal technology should be excluded;

- Cities should work closely with the Senate Banking, Housing and Urban Affairs Committee and the House Public Works and Transportation Committee as well as the Appropriations Committees of both Houses to ensure an effective policy for new starts urban initiatives type projects and downtown people movers;

- The bus capital program should be reformed to reflect actual transit ridership.

The Interstate Transfer Program

Since 1973, cities have implemented or contemplated cancellations of interstate highway segment construction with a subsequent transfer to a public transportation or lesser highway project from general funds. As prospects for building particular segments diminish and as the deadline for decisions grows near, the Interstate Transfer program has become more important to the future of urban

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transportation programs. With a potential of $12 billion in transfers over the next several years, though, the Administration has proposed only some $4.5 billion to fund this program. The views of the nation's cities are clear with respect to the future of this program, calling for:

- A resolution of the clear conflict between the insufficient resources for the program versus the great needs;
- Exploration of the possibility of increasing the federal gas tax slightly to provide for greater resources to pay for transfers.
- "Freedom of substitution" so that any city electing to implement its right to transfer would have the ability to substitute rail-oriented projects, including new starts and extentions;
- Opposition to granting the Secretary of Transportation the authority to "demap" segments on the Interstate System, believing this is a function properly remaining at the state and local level, as current law provides;
- Opposition to a "cap" on the value of Interstate segments, believing that this would leave cities subject to the ravages of inflation.

Federal Highways and Cities

The nation's federal highway investment program has a substantial impact on cities particularly the $800 million Federal Aid Urban System program However the Reagan Administration has proposed eliminating the FAUS program by 1984, as well as ceasing to pay for such important functions as landscaping and noise abatement as part of highway projects. This is of significant concern to Mayors. Their consensus views call for:

- Saving FAUS, but changing it to make it a better program, including a formula with greater targetting ability to meet urban needs and greater attention paid to local priorities;
- A look at the regulatory and administrative burdens of the highway program so that greater efficiency would be received from existing funds;

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- Support for retaining such functions as landscaping and noise abatements -- considered amenities, but actually necessities;

- A look at the gas tax as a means of bolstering revenues to the Highway Trust Fund.

Conclusion

The Transportation Committee's Outline of Principles will guide the Conference in the pursuit of policy which makes sense for cities over the course of the next several months. In addressing the Transportation Committee, its Chairman, Mayor Maynard Jackson, said this: "We may not win all we go for, but we have an obligation to go for all we believe."

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Transit Financing and the Cities

The Record and the Views of the Nation's Mayors

May 1981

UNITED STATES CONFERENCE OF MAYORS
1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE: (202) 293-7330

May, 1981

Transit Financing and the Cities: The Record and Views of the Nation's Mayors, reviews the challenges Mayors face in financing their area's transit systems. It is based on a new comprehensive survey of local public transit finance conditions in all major metropolitan areas just completed by the U.S. Conference of Mayors. This paper presents the most important findings from the survey, including the overwhelming evidence that Mayors are showing leadership in financing their transit systems through earmarked taxes for transit, contributing general funds and raising fares.

Transit plays a vital role in our communities' mobility, vitality and economic health. Because of this, Mayors have placed a high priority on the stability of their systems' financing. Now more than ever the need is great for Mayors to continue their excellent progress in local transit financing. Transit Financing and the Cities: The Record and the Views of the Nation's Mayors puts this record in perspective, examines a wide range of areas in which cities have exhibited not only responsibility but creativity in transit financing, reviews problems and outlines some future directions.

The U.S. Conference of Mayors hopes Transit Financing and the Cities: The Record and the Views of the Nation's Mayors will be a useful addition to the continuing development of effective national transportation policy.

John J. Gunther
Executive Director

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Transit Financing: The Issues

The nation's cities are spending local resources, taxing their citizens and raising fares to support public transportation.

This support is at an all time high level -- and it is growing.

This commitment goes beyond -- far beyond -- the relatively small amount of federal funding now available to cities. But a federal role in transit financing will continue to be an important element in the federal/state/local partnership that keeps transit alive.

These are some of the findings of a new, comprehensive survey of public transit finance just completed by the U.S. Conference of Mayors to examine the challenges Mayors face in financing the capital and operating costs of their transit systems. Ridership is soaring. But so is the price of fuel, and government budgets at all levels are tight.

The Reagan Administration has proposed a new public transportation policy emphasizing the use of federal funds for capital expenditures for transit systems, but seeks a solitary local and state role in financing operating expenses after FY1984.

The federal/state/local partnership has characterized national public transportation policy for 17 years. Since federal operating assistance started in 1974, the federal government has worked hard primarily with local governments to develop public transportation financing as a joint effort. Now, more than ever, the need is great for continued leadership by local elected officials in planning and implementing new state and local funding sources for transit as strong elements of that partnership. The Conference of Mayors survey results show vital evidence of that local leadership.

Cities: Sharing the Transit Financing Burden

Elimination of the federal operating assistance program for transit would mean a step backwards in financing policy, and in the progress the nation's transit systems have made in recent years.

When federal, state and local governments initiated their fiscal support of public transit systems in the 1960s, these systems had moved from self-supporting private companies to debt-ridden operators confronted by bankruptcy in a declining industry.

Faced with the prospects of losing their transit systems, most cities elected to provide some form of fiscal support. At the federal level, priority was given to replacing capital equipment that had been allowed to wear out, with the local governments picking up the operating deficits. In the mid-1970s that federal

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policy began to provide support toward operating costs -- reflecting the growing needs of transit and the federal policy decision that there should be assistance to keep fares from becoming too great a burden on individual passengers, many of whom are low income and elderly.

As the gasoline shortage of the 1970s and skyrocketing prices pumped riders into buses and rail systems, cities around the country initiated programs to further upgrade their transit systems, and not surprisingly, public transit's share of local government budgets increased -- even with considerable federal aid available. Thus, the importance of local fiscal contributions to transit has been increasing steadily, and, in recent years, local governments have become especially active in establishing local and state taxes for transit support and other financing innovations.

The U.S. Conference of Mayors recently completed a survey of the Mayors of 139 cities, including all major cities from urbanized areas over 200,000 population, and two dozen smaller cities.[1] The public turns to Mayors and other local elected officials to develop ways to raise funds for capital and operations. The Conference of Mayors survey found that Mayors not only take this responsibility seriously, but have made great strides in recent years in the area of transit financing. Here is what the Mayors say:

- 62 percent of the cities currently contribute some local funds to transit, despite the fact that in almost 80 percent of the cities, the transit agency is not a formal part of city government;

- Almost half of the cities responding reported they have state or local tax sources earmarked specifically for transit capital and/or operating funds. 21 more said they are planning to establish such a tax within the next two years;

- 66 percent (two-thirds) of the cities responding reported fare increases during the first nine months of 1980; between 1979 and the first nine months of 1980, 80 percent of the systems reported they have had a fare increase; and

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[1] U.S. Conference of Mayors, The Transit Financing Agenda for the 1980s: Status Report and Views of the Nation's Mayors, published by UMTA, April, 1981.

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- When asked to rank in priority 10 local transit financing issues, Mayors gave highest priority to developing new local tax revenues.

In a separate survey taken during April 1981,[2] the Conference talked to Mayor's offices in 100 cities to assess the specific impact of the Reagan Administration's proposal to drop public operating assistance after FY1984. While the cities in the earlier transit financing study and the April survey are not precisely the same, almost all large cities participated in both, and the April survey results are overwhelming.

Cities predict steep fare increases, ridership decreases and reduced services if the Administration's proposal is adopted. The proposal recommends that public transportation operating assistance, some $1.1 billion in FY1981, be phased out over FY 1983 and 1984. Cities would receive sharply reduced funds to assist in operation of transit systems during those years -- and none at all after FY1984.

Although local governments, as the Conference transit financing survey shows, already bear the major burden of paying for their systems, dire consequences are predicted if the federal role is eliminated, as summarized below.

ELIMINATION OF TRANSIT OPERATING ASSISTANCE: THE URBAN IMPACT
(percent of cities responding)

46% will face substantial fare increases
20% will face moderate fare increases
65% will suffer significant ridership decreases
57% will reduce services

U.S. Conference of Mayors policy has called for retention of the operating assistance program with substantial changes to bring about greater targeting and efficiency in the use of the funds.

Significantly, the impact of the proposed elimination knows no geographic or city size boundaries. One major northeastern

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[2] U.S. Conference of Mayors, The FY82 Budget and the Cities: A Hundred City Survey, May 1, 1981.

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rail system city sees a 40 percent fare increase over the current level of 65 cents. Another medium city in the Rocky Mountain region predicts a fare increase to 80 cents or one dollar over the current level of 40 cents. A Great Lakes university town looks for a doubling of fares while a Midwestern industrial city sees fare increases of up to 100 percent.

Significantly, fare increases are no guarantee to cities of an increase in revenues. Indeed it could have the opposite effect -- decreasing revenues by driving people back into their automobile. The example of one Pacific Northwest city is instructive -- a fare increase instituted a year ago has resulted in a 10 percent decrease in ridership. One city estimates that a 33 percent fare increase yields a 6 percent ridership decrease.

Many cities expressed sentiments similar to one far Western city which said "If fares are increased we may lose some riders, but it's hard to say. The important thing is that we will not be able to expand like we planned." Thus, just at the time when cities will need to provide for transit growth as gasoline prices continue their steep climb, they may find their efforts in this area stifled.

Public transportation is particularly important to the nation's low income urban residents -- they often have no alternative. Therefore, the impacts of elimination of operating assistance would hit them disproportionately. A Northern California city says this: "Ridership would probably remain about the same on regular routes because poor residents must use public transit. They would have to absorb higher fares." The elderly are similarly effected, with one city estimating that 70 percent of its elderly population utilize the public transportation system.

While cities have been developing their own local resources to pay for transit, the message from this recent survey seems clear: a continued federal role in some form of operating assistance program will be necessary to prevent significant transportation problems in cities.

The Local Financing Agenda for the 1980s

As Congress grapples with the future of public transportation programs, cities across the country face the hard, more immediate task of raising revenues -- at both state and local levels -- to meet rising transit operating deficits. Following is a more detailed summary of key findings from the Conference of Mayors transit financing survey and brief analysis of what these results mean for Mayors and cities:

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Setting Local Priorities -- The Conference survey asked the cities to rank in order of importance ten issues.

Ranked at the top was developing new local tax revenues, followed by securing operating funds for expansion of system routes, and improving present service levels. Below is a summary of what cities rank as the top three issues, combining some of the individual issues originally listed in the survey into broader categories.

TRANSIT FINANCE: THE MAYORS SPEAK

Summary of Key Results: Issues	Cities Ranking It		
	#1 Issue	#2 Issue	#3 Issue
Increased Revenues: Fares and/or Local Tax	34	8	14
Increased Funding for Improved Service Levels and/or Route Extensions or Additions	41	44	37
Capital for System Expansion and/or Replacement	14	28	25

This table makes it quite clear that increased local revenues and funding for service improvements and expansion represent important local considerations.

To achieve these goals, Mayors:

- indicated their willingness to push for new taxes at the local level;
- want more support from state governments in terms of financial resources and legislation for taxes; and
- want more flexibility and predictability in federal funding programs.

While recognizing that there is a continued need to use federal funds for any operating-type needs program of some kind, the area in which cities seem to feel free to ask for more federal

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funds is in capital improvements, which the Reagan Administration has indicated is its own priority as well.

Earmarked Tax Sources, Other Contributions -- Despite the fragmented relationship between cities and their transit systems, 62 percent of the 132 cities participating in the survey said they are currently contributing some local funds, which usually means property taxes taken from general city revenues.

EARMARKED REVENUES FOR TRANSIT	
Cities with transit taxes now	46
Cities with plans for transit tax within two years	21

In a growing number of cities, however, taxes are being earmarked for transit at all levels -- local, regional and state. As the above table shows, out of 101 cities responding, 46 (46 percent) reported they had state or local tax sources earmarked specifically for transit capital and/or operating funds. Fifty-five cities reported they had no earmarked taxes in place at the present time, but almost half (21) of the 52 said they were planning to establish such a tax within the next two years.

Of the 46 cities reporting earmarked taxes, 22 cities use the sales tax, 8 cities use gasoline tax, 11 use property taxes, and the rest use other forms such as utility, employer, vehicle, and oil company profits taxes -- suggesting considerable variation.

Cities and Fare Increases -- In the Conference survey Mayors acknowledged the most popular transit funding sources for voters were appropriations from general funds and fare increases, and cities have been doing their share in raising fares to cover costs.

As the table on the following page shows, out of 106 systems reporting, two-thirds showed fare increases in 1980, covering only the first nine months of the year. Between 1979 and the first nine months of 1980, 80 percent of the systems had had a fare increase.

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RAISING TRANSIT FARES
(percent of 106 systems reporting)

Transit systems with most recent fare increase in 1979	13.2%
Transit systems with most recent fare increase in 1980 (during first 9 months)	66.0%
TOTAL	79.2%

These results point out the inadequacy of the recent General Accounting Office study[3] which states that:

> "Many transit systems have not raised their passenger fares for several years. Seven of 19 systems that provided information, or 37 percent, had not raised their fares within the last five years. Twelve had not had a fare increase within the last 3 years."

Since the Conference of Mayors survey questioned virtually all the major transit systems and had a high response rate to the specific question on most recent fare increases, it is quite clear that cities have not shirked their responsibilities in terms of equitable fare levels.

Fare Innovations -- The use of special employer transit passes to pay for fares has now become an established trend in all city sizes, especially since the long gas lines in the summer of 1979 when many transit systems across the country witnessed dramatic surges in ridership.

Out of 113 systems responding to questions on use of special passes, the Conference's survey shows that 81 percent said they use special transit passes, with almost half of those used being monthly passes. In addition, almost 60 percent of the systems responding use some type of employer ticket purchase program, with almost 80 percent being partial or full subsidies to employees.

[3] General Accounting Office, Soaring Transit Subsidies Must Be Controlled, February 26, 1981, pg. 36.

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This trend points to recognition of the economic value of a viable transit system, as well as appreciated support from the private sector.

NEW WAYS TO PAY FOR TRANSIT
(percent of systems responding)

81% use special transit passes

60% use an employer ticket purchase program, with 80% partially or fully subsidizing employees

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Administrative/Intergovernmental Restraints -- The increasingly fragmented nature of local governments across the country is symbolized in the relationships between general purpose transit systems and city government.

WHO RUNS TRANSIT?
(percent of cities reporting)

78% Transit agency not part of city government

22% City operates transit system

Of 130 cities responding, 101 (78 percent) said the transit agency was not part of city government. Cities were also asked about their transit system's fiscal and tax powers, and out of 100 systems responding, only 25 (one-fourth) possessed independent taxing or other financial powers. Of those 25 systems, 18 identified taxing powers, with some systems with more than one power. Eleven agencies have taxing power based on property tax, 6 based on sales tax, 1 vehicle tax, 2 income tax, and 2 other forms of tax. In addition, of those 25 cities with financial powers, 7 can issue bonds, 4 can set fares, and 3 possess other miscellaneous powers. It is important to note that often, it is state government which restricts the abilities of cities and transit agencies to raise adequate funds.

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Perhaps even more significant is the fact that at least three-fourths of the cities responding to this survey question indicated that the major general purpose transit system lacks any power to develop new local revenues. When regional transit authorities are established by law or referendum, the power to levy some type of tax is frequently part of the legislative package, and the coming decade may see more of these arrangements.

Conclusion

On the progress in local transit financing, there should be no debate. There will be considerable discussion, though, in the coming months on the future of the federal role in transit operations. The federal role might remain constant or grow somewhat. Even so, the need for increased local funding for transit will become greater in the next decade because of rising costs sure to outpace any federal role. Local officials will assume an even larger share of the responsibility for meeting these costs.

In deciding how to meet its transit system's operating deficit, a city faces a variety of choices that require careful consideration of both supply and demand issues. On the supply side, one way to close the revenue-cost gap is to lower the level of service and thereby reduce total costs. However, here the revenue impact is uncertain Some ways to lower service levels would be to (1) drop underutilized routes, and/or (2) reduce service quality by implementing longer headways or cutbacks in maintenance. These choices are usually difficult to achieve and have dire consequences to the mobility of citizens and the economy of the city.

Alternatively, communities can develop financing strategies. These include (1) new sources of revenue such as a tax increase or earmarking, or (2) increased fares. Fares, however, cannot rise to unreasonable levels. If they do, it can discourage transit use, especially for those who can least afford to pay. In terms of increased taxes or other similar revenue producers, cities in the Conference study have already shown considerable progress in this area, and plan to increase their efforts -- even if federal operating support is continued.

How cities balance all these alternatives, and how they resolve these issues will determine the future of transit for the next decade. One point is clear -- though strong federal and state assistance will be required, cities will continue to have the leadership role in transit financing.

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Senator LUGAR. Thank you very much, Mayor Wilson.

I would like to call now on Commissioner Oliver.

STATEMENT OF WILLIAM OLIVER, COMMISSIONER, DADE COUNTY, FLA.; REPRESENTING THE NATIONAL ASSOCIATION OF COUNTIES

Mr. OLIVER. Thank you, Mr. Chairman.

I am William Oliver, commissioner from Metropolitan Dade County, Fla. I am also vice chairman of the National Association of Counties' Transit Subcommittee.

On behalf of the 3,104 county governments in this Nation, we welcome the opportunity to present our concerns and thoughts to this committee. We hope that you will give our testimony careful consideration, and that the final version of the Transit Assistance Act of 1981 which emerges from the committee will specifically address the issues we raise.

COUNTY GOVERNMENT

County government is important to millions of Americans and has been with us since the founding of the first counties, in Virginia in 1634.

Today, over 90 percent of the American population receive at least some local services from a county government. For 35 percent of Americans, their county government is their only government. If we are to address the local governmental needs of this 35 percent of the American population, the only way in which it can be done is through our counties.

We sometimes tend to think of county government as a part of rural America, and often this is true. But many of our counties also deal with urban problems, and often these urban counties have all of the powers, responsibilities, and problems of large cities.

My own county of Dade County, Fla., is such a county.

Over the past decade, many of our suburban and urban counties have become providers of public transportation services. A number of these urban counties, such as my own, directly own and operate metropolitan transit authorities. The committee should also know that many other counties are becoming involved in new transit services. The reason for this growth can be traced to the Nation's current energy shortage and price demands, as well as the need to provide all our citizens with suitable alternatives to the automobile.

Because of this growth in county involvement in public transportation, and our concern about rising transit deficits, NACo conducted a recently completed study with the U.S. Conference of Mayors and the National League of Cities: "Transit Financing Agenda for the 1980s: Status Report and Views of the Nation's Chief County Elected Officials."

Later, our testimony will summarize the results of that study and a recent survey of county transit officials regarding the probable effects a phaseout of the section 5 operating assistance program will have on their transit systems.

We have a mixed assessment of S. 1160 to present to you, Mr. Chairman.

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We will indicate first the positive aspects of the legislation before us, and then go on to describe the concerns it creates for our suburban and urban county constituents.

LOCAL OPTION

NACo commends the administration for its sincere attempt to make local option a reality in S. 1160. We strongly support a responsible but more flexible approach to providing transportation for the handicapped than the current Department of Transportation 504 regulations permit.

The administration's acknowledgement that local handicapped transportation programs can be structured to include not only accessible buses but paratransit services or some mix of the two is, therefore, welcomed by NACo.

However, we do have some suggestions about the provisions of section 108, local option for transit for handicapped, which we were unable to review until Tuesday of this week.

The first concerns the locally developed criteria for alternative transportation services described in section 16(d)(2)(A).

Are these criteria to be developed solely by the recipient of Federal funds, or in cooperation with representatives of affected local governments, the handicapped community, concerned citizens, and paratransit providers of transportation to the handicapped?

NACo suggests the latter approach, since it would insure that "* * * the recipient develops criteria that are responsive to local needs."

We would also suggest that the public hearing and comment process described in section 16(d)(2)(B) explicitely requires the participation and endorsement of these segments of the community, since all the affected parties would then have their views represented in the local decisionmaking process.

Finally, there is no mention in the administration language of the need for alternative services to be comparable with regular, fixed-route public transportation services. We would, therefore, like to know if this means that comparability is no longer necessary in providing specialized transportation services for the handicapped.

NACo welcomes the administration's repeal of section 12(b)(2) of the Urban Mass Transportation Act, which authorizes the Secretary of Transportation to specify factors to be considered locally in the award of contracts for buses and railcars. In our view, the proper Federal role in procuring rolling stock is as the administration states: "To assist grantees in their efforts to obtain high quality products at the lowest possible prices."

We are pleased the administration has adopted this wise and flexible approach to procurement policy.

NACo awaits a careful review of the labor protection provisions under section 13(C).

These requirements have served as a stumbling block to State and local participation in the small urban and rural public transportation program authorized by section 18. This is the only program which provides direct Federal assistance to rural areas for initiating rural public transportation services. As such, it is extremely important to many of our rural counties.

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Therefore, we regret that S. 1160 contains no modification of the cumbersome 13(C) provisions in the current act. We, therefore, hope that the subcommittee will remedy this omission by holding more extensive hearings on this and other regulatory impediments to efficient and cost-effective public transportation services.

While NACo acknowledges priority should be given to maintaining existing transit systems, we insist that local governments be permitted the flexibility to use their section 3 capital grant funds for projects consistent with locally determined needs and objectives, including cost-effective new rail starts.

FUND ELIMINATION PENALIZES GROWING AREAS

The total elimination of funding for new start preliminary engineering and planning needlessly penalizes the growing areas of the country where dramatic increases in transit ridership and productivity are possible.

You yourself, Mr. Chairman, stated on December 12, during the debate on the Surface Transportation Act of 1980, that:

> We need a (section 5) formula that encourages efficiency of operation and helps those areas that are experiencing tremendous growth to expand.

We would hope that your wise concern for these growing areas would not stop with section 5, but also encompass section 3, in providing them with the capital resources to provide for their future transit needs.

The total elimination of funding for new start planning and preliminary engineering also conflicts with the administration's own laudable commitment in section 110 of the Transit Assistance Act, to shaping allocations and priorities for funds "by the level of local commitment, the degree of local need and the annual national proirity for federal funds."

The lack of any stable and reliable source of Federal seed money will have a chilling effect on sincere efforts to build local financial and political support for transit. Endlessly growing suburban sprawl, increasingly congested roads, and motorists trapped by decaying highways and escalating fuel costs can be the only legacy of such a shortsighted approach.

NACo, therefore, urges the subcommittee to continue its flexible approach to future section 3 authorizations, by allowing local governments to target these funds to projects meeting their local transportation needs, including new starts.

The requirement in S. 1160 is that section 3 recipients "have the technical and financial capability to maintain facilities and equipment * * * purchased with Federal funds" poses a number of questions, Mr. Chairman.

It is not clear how a recipient's ability to maintain facilities and equipment will be determined. No guidelines or criteria are given. While we appreciate the administration's well intentioned flexibility, it will increase the uncertainty potential recipients experience, and could possibly lead to inequities.

The other question this provision raises is how to pay for this expanded maintenance requirement.

Maintenance costs can currently be covered by section 5 operating assistance. Since this program is scheduled for elimination by

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fiscal year 1985, isn't the Administration mandating additional costs for transit operators and the local governments that operate or support transit systems but taking away the funds to pay for these requirements?

Therefore, NACo urges the elimination of this provision in both sections 3 and 5, unless additional funding is provided to recipients.

Another element of uncertainty has been added to the capital grant program, by changing the Federal share from 80 percent to a share "not to exceed 80 percent." This means that the Federal share can and probably will be less than 80 percent. While this may be justified in some cases, it may not be in many others.

How will Washington-based bureaucrats determine what the level of Federal support should be, without knowing the extent of a local community's transit dependency and financial ability to increase its share?

Washington will be making judgments about local conditions without any clear criteria or guidelines. In all probability, politics and budgetary goals rather than a careful assessment of local conditions will dictate the level of Federal support.

AT THE MERCY OF BUREAUCRATIC DISCRETION

Instead of freeing local governments from the shackles of Federal intrusion, this provision in S. 1160 places them more than ever at the mercy of bureaucratic discretion. It also adds to the uncertainties local governments face in committing their limited resources to expensive, long-term transit capital improvements. This will discourage transit development in the growing areas whose interests you championed during the last Congress, Mr. Chairman.

Therefore, NACo urges the subcommittee to amend this provision, Mr. Chairman, and return to the original 80-percent Federal share for capital projects.

As you may know, Mr. Chairman, NACo supports the President's efforts to balance the budget, control inflation, and restore the economic vitality of the Nation by controlling Federal spending. However, we cannot support cutbacks which totally eliminate needed programs such as section 5, and endanger the viability and effectiveness of existing public transportation systems.

Five months ago, Mr. Chairman, on December 12, you stated on the floor of the Senate that you were "in full favor of Federal assistance to mass transportation, both capital and operating."

We had hoped that your wise support of such a position would continue. NACo continues to regard this program as essential, though we are willing to accept cutbacks and changes in its structure. The reasons for our continuing support of section 5 are based on the results of our survey in March of county transit officials, regarding the impact of the proposed phaseout of operating assistance on the public transportation systems operated or supported by counties throughout the country.

Seventy-six percent of those surveyed indicated that they would agree that some of local farebox increase ought to be imposed, in order to receive assistance.

NACo's testimony of March 19, 1981, submitted to the House Budget Task Force on Transportation, Research and Development, and Capital Resources, presents a detailed analysis of the survey

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results. We ask that it be included in the record as part of our testimony, Mr. Chairman.

The following paragraph summarizes the survey's major findings:

> Severe cutbacks in operating subsidies for urbanized areas below 750,000 can be expected by the end of 1983. The phaseout of the entire program will result in substantial fare increases of as much as 200 percent in 1984 in county transit systems, such as that of Allegheny County. Linked to fare increases will be a dramatic drop in ridership levels.

A Somerset County official estimated a 25-percent loss of ridership was possible throughout the State of New Jersey. Allegheny County not only calculated a ridership loss of at least 9 percent, but has estimated that layoffs of 495 administrative and operating staff would be necessary.

In addition, there would be increased strain on local and State budgets to compensate for lost Federal assistance. In Milwaukee County, this will mean increased property taxes, creating a crunch on local taxpayers faced with funding major sewage problems, medicaid increases, and transit costs from the same source. Current property taxes are already high, and the county share of transit expenses has quintupled in 3 years.

The State is not a likely source of much more assistance, since its share is already generous, and escalating at 40 percent of the transit costs.

Additional impacts cited by transit officials included a 15-percent cutback in service in Allegheny County, loss of total service on transit routes in Fresno and St. Louis Counties, and a total wipeout of public transportation in Somerset County, N.J.

With possible impacts so severe, Mr. Chairman, certainly more than a 2-day hearing in Washington is necessary to provide a careful review of the drastic changes in section 5 the administration is proposing.

Indeed, Mr. Chairman, some of us asked to testify were given less than 4 days to prepare for the hearing, and even less time to consider the administration's final legislative package.

NACo cannot accept cuts which earmark specific programs for elimination without a careful evaluation of the impact of such actions on the Nation's transportation infrastructure, and the ability of its local and State governments to finance and continue needed programs.

More than a 1-day hearing in Washington is needed before the program change of this magnitude is approved. Field hearings throughout the country are also needed to get the views of affected county and city officials, transit operators, and the local taxpayers supporting public transportation on the advisability of such a course, and to consider suggestions for restructuring and improving the operating assistance program so that it is targeted to the levels of transit service and rewards truly productive and efficient systems.

The use of the 1970 census, as proposed by the administration bill, is questionable in our view, Mr. Chairman, since it penalizes growing areas of the country.

However, the failure to change the current formula based solely on population is also inappropriate, since it doesn't reflect the existing levels of transit service.

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Both of these issues of equity need to be reviewed before Congress decided whether a workable and cost-effective operating assistance program is impossible to design.

BLOCK GRANT APPROACH

A flexible, block grant approach combining sections 3 and 5 should also be considered before it is rejected out of hand by the committee. Faced with declining Federal assistance, flexibility in the use of those dollars is absolutely essential to transit operators and the localities supporting them. They can then target limited funds to locally accepted though differing transportation needs.

We therefore urge the committee to consider a block grant approach, and will be happy to poll our members for further suggestions on how best to structure such a program.

Finally, Mr. Chairman, even if a total phaseout of section 5 is incorporated into the final legislation adopted by this committee, a more gradual scaling back of the program is needed.

A gradual reduction of section 5 over the total life of the reauthorization bill through 1986 is essential. This will give localities and transit operators more time to adjust, to improve their systems' productivity, to increase fares steadily but gradually so that ridership declines as little as possible, and to raise additional local and State revenues.

This would also be a good time frame in which to phase in a block grant program, should Congress adopt this approach.

Rural public transportation, as you know, Mr. Chairman—S. 1160 reduces section 18 authorizations to $75 million and eliminates eligibility for operating assistance by September 30, 1982.

This will effectively shut down many new public transportation programs in small urban and rural areas throughout the country. It will also remove the transportation safety net from the many elderly, handicapped, and disadvantaged riders who use such systems.

If such cuts of the proportions proposed by the administration are judged appropriate or needed, flexibility in the use of sharply decreased funds is imperative, rather than arbitrary Federal dictates, such as those stating that rural public transportation operators cannot use their few remaining section 18 funds for operating assistance.

Let them make flexible and creative use of declining Federal dollars. They can determine whether the best use is the purchase of another vehicle or to meet the rising costs of serving widespread, rural riders.

Therefore, NACo will not support total elimination of section 18 operating assistance.

If such a phaseout is adopted by Congress, the timing should, at least, parallel that set for the section 5 program, so that the strongest of these fledgling systems will survive.

Again, the question of the use of the 1970 census needs to be resolved, so that remaining section 18 funds are targeted to the truly rural areas, for which the program was designed.

Finally, the changes in the transfer provisions in section 105(d) of S. 1160, giving the Governor authority to shift funds between areas

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below 200,000 and areas below 50,000, need to be examined, Mr. Chairman.

While no funds could be shifted to areas below 50,000 after September 30, 1982, it is not clear whether section 18 funds could be shifted to areas above 50,000 after this date. Given the fact that this legislation significantly reduces section 18 authorizations and retains the 1970 census, which does not reflect population increases in rural areas, this would place even greater strains on this already small program.

While NACo appreciates the administration's desire to deal expeditiously with the issues of 504 and Federal procurement policies, there has not been sufficient time for a careful review of even these issues, much less the proposed phaseout of the operating assistance program, changes in the Federal share for capital projects, newly mandated but indefinite maintenance requirements.

Therefore, NACo suggests that the committee delay its proposed markup date of June 2, to allow the new Congress the kind of careful review the chairman suggested was necessary, during the debate over the Surface Transportation Act of 1980, 5 months ago.

We applaud his wisdom and look forward to working closely with him and other committee members, to develop a more flexible and cost-effective approach to Federal transit assistance. To do justice to this important task, more time and a broader range of inputs from all interested parties is needed.

We thank the chairman and the committee for this opportunity to share the views of the Nation's counties on this important legislation.

Senator LUGAR. Thank you very much, Commissioner Oliver. Mr. Slapin?

STATEMENT OF KENNETH SLAPIN, COUNCILMAN, NORWALK, CONN., COMMISSIONER OF THE NORWALK TRANSIT DISTRICT, AND CHAIRMAN OF THE NATIONAL LEAGUE OF CITIES STEERING COMMITTEE ON TRANSPORTATION & COMMUNICATIONS

Mr. SLAPIN. Thank you, Mr. Chairman, Senator Heinz.

My name is Kenneth Slapin, a member of the Common Council of Norwalk, Conn. I am commissioner of the Norwalk Transit District and I am chairman of the National League of Cities Steering Committee on Transporation and Communications. I am testifying on behalf of our membership of some 15,000 direct and indirect member cities ranging in size from New York and Los Angeles to Tipton, Ind., and Farrell, Pa.

With your permission, Mr. Chairman, I will submit my written statement for the record, along with the specific legislative position of the League, and speak here somewhat less formally.

Senator LUGAR. It will be printed in full.

Mr. SLAPIN. Thank you.

I should begin by advising the subcommittee that when the league's board of directors met earlier this year to gage the league's response to the administration's economic program, the board was in agreement, perhaps resigned acceptance is a better word, with many of the policies and goals enunciated. However, the board differed strongly in some specific areas and very specifically,

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it differed with the administration on the issue of aid to public transportation in the nation.

OPPOSE ADMINISTRATION'S PROPOSED PHASEOUT

The board and the steering committee strongly oppose the administration's proposed phaseout of operating assistance for public transportation by 1985. We do, however, appreciate the necessity for some reductions in the Federal transit program, given current practical realities. And we believe the changes in the program structure should be made so that the money available for assistance to public transit can be more productive and more efficiently spent. Consequently, we would support a 1-year bill, consistent with the budget committee's fiscal 1982 funding level recommendations.

Recently the league's steering committee, of which I am chairman, met to develop a specific legislative position to try to determine which cuts in the transit program would be most acceptable, or perhaps least unacceptable, and to make proposals for restructuring of the program for spending what money is available more effectively. And I would like to review that legislative position with you.

Basically, it felt that the program structure now in place should be kept in place, even if parts of it would not be funded adequately or perhaps even much at all, for a limited period. It was felt that the legislative authority should not be removed.

The capital assistance program for bus transit systems, which are the backbone of the urban transit network, should, of course, be kept in place, as the administration proposes. However, the league can acquiesce in deferring funding for most planned new rail starts because those are the expenditures which are of enormous magnitude and take a good deal of time to get people riding. And so, while we feel that the program of new rail starts should not be abandoned, we also feel strongly that if something has to be deferred, rail starts could be deferred without doing violence to the Nation's transportation system.

Nevertheless, we feel that if, in a given budget year, rail modernization funds available aren't expended, it would be desirable to make those funds available for at least preliminary engineering of new, fixed rail starts. It is entirely likely that when the Nation's economy improves, it will be possible for us, once more, to consider funding new rail starts.

Now is perhaps not the time. But abandoning the program so that, at the time when the nation feels it can afford it new legislative authority would be necessary, seems to us a mistake. We feel that in the case of later approved new rail starts, prior local expenditures for new rail planning and preliminary engineering should then be considered by the Department of Transportation as eligible project expenses, so there would be some encouragement for a community to proceed now without prejudice for later Federal funding, to do the necessary planning. And if a new system is approved, then its initial expenses could be counted as local share.

We also feel that the capital assistance program should be made flexible enough so that, if a community doesn't spend all of its capital money for capital purposes, it should be entitled to redirect

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those funds and utilize them for transit operating purposes. Or, conversely, since we feel very strongly that a continuation of the operating assistance program is essential, we feel that, in the case where a community doesn't spend all of its operating assistance funds, it should be possible for a community to use those funds for capital purposes, perhaps for new rail starts.

In some jurisdictions, for instance, local agreement, among communities for local taxes are able to take up a good share, a very substantial share, of operating assistance costs. That is, to a degree, the case in the Washington, D.C. metropolitan area. And if operating assistance funds were available, but not utilized, it would be useful to make those operating assistance funds available for capital purposes, so that they would go farther.

The basic tenant of the league's position on transit programs is that it is essential to reauthorize the operating assistance programs. That is, it would be a terrible mistake to phase out the program of operating assistance to public transit. Nevertheless, we recognize that it would also be useful to restructure the program to provide incentives to control costs and improve productivity.

We would urge that the operating assistance formula be reconsidered and targeted toward transit systems with high levels of service, while at the same time providing adequate support for emerging transit systems. We would recommend, for instance, that in a restructured formula, there be a ceiling on the level of system's revenues which can be covered by Federal operating assistance, so that no jurisdiction would receive a disproportionate amount of assistance.

We would also recommend the institution of a new requirement that every jurisdiction contribute from local tax revenues, or perhaps fair box revenues, but primarily some contribution of local taxes, possibly a minumum percentage of operating costs, so that there would be an immediate incentive for local officials to be concerned with curtailing costs to the maximum extent possible.

Even if the lion's share of operating costs is not covered by local taxes, the existence of some share of local taxes in the operating cost of a system insures that there will be some local officials very concerned about keeping down that local tax contribution. And we all want to make the necessary economies while providing public services. This is one way to go toward that objective.

We would further recommend that two additional operating assistance incentive tiers be established. One would be some sort of bonus for productivity, measured in terms of increasing ridership or revenues over a national median. And there would be another incentive for systems which can demonstrate that they have a well-maintained transit system, because it is important for transit systems to continue to be more productive and for them to continue to provide maintenance so that the very substantial Federal contribution to capital needs is not squandered.

Finally, the League would recommend that operating assistance entitlements which are not utilized should not be held for 3 years, as is currently required by statute, but should be obligated in the same fiscal year as appropriated or reallocated to other eligible recipients after a 1-year period. We feel that with the maintenance of the operating assistance program, even at its current, arguably

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inadequate level, the funds would be made far more productive if the program were restructured in that way, and we would insist upon the essential nature of the continuation of the operating assistance program because we cannot rely on the farebox to support the cost of transit programs.

I heard Secretary Lewis on March 10 say that it is obvious, we will not support mass transit through the farebox. The question is how to subsidize. And if the feeling is that if Federal assistance is curtailed, State and local jurisdictions will make up the costs, that is not realistic.

In my own State of Connecticut where there is a severe fiscal crisis, it is not possible to conceive of greater amounts of State assistance for public transportation. The fight is to maintain the current level, because the State's finances are in very bad condition. And, besides, if we are very concerned about keeping down the overall level of public sector expenditures in our country, we should think about cutting those programs which will disappear because they are not essential, if Federal assistance is cut.

We should not be thinking, it seems to me, about tax shifts which maintain the programs, perhaps, or hope to maintain the programs, but shift the burden to other jurisdictions which, when they cannot afford them, cause essential programs to go down the drain.

FARE INCREASE CAUSES RIDER REDUCTIONS

Increasing fares cause ridership reductions. I heard the colloquy between the secretary and you, Mr. Chairman, about ridership decreases. Ridership decreases are experienced in individual systems, in Washington, D.C. particularly, where there are fare increases. Revenues go up slightly when fares go up considerably. And, as I understand it, the District of Columbia metro system has undergone two major fare increases in the space of a year. That causes some increase in revenues, but a decline in ridership.

The overall secular trend since 1972 and 1973 is for very considerable increases in ridership nationwide. I know that in my own community of Norwalk, Conn., ridership has increased something on the order of 7½ percent over last year, and it is 55 to 65 percent over what it was in May 1979, which is our base line just before the gas lines started. And it is 25 to 30 percent over what the ridership was at the height of the gas line crisis.

I think we will find that there has been a steady increase in ridership in the last 8 years. You would not expect to see an increase in ridership if Federal operating assistance is curtailed or abandoned and fare increases cause ridership to begin to slip.

I also heard Secretary Lewis remark that the administration's proposal would be beneficial or would be sensitive to the needs of the large systems. What I interpret that as meaning is that the large systems will be protected because we are going to go after them last. I don't think that is a real protection for the large systems, but the implication of that position is that systems in small cities will be drastically affected very quickly.

The so-called section 18 cities of under 50,000—one example of which I am aware is New Castle, Pa. New Castle is a small distressed city with an eroding tax base. Last year the vast majority

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of its transit system's 325,000 passenger trips, were taken by persons who used the bus as a necessity; 170,000 of those trips were made by senior citizens, 42.6 percent of the riders came from households with no automobiles.

Next year, New Castle expects to receive about $300,000 in section 18 operating assistance, about 37 percent of the operating cost of the system as a whole. Next year, New Castle also anticipates getting 12 new buses to meet its needs. They are worth about $1.8 million. But New Castle has pointed out a paradox. With one hand the Federal Government will be providing much needed capital assistance, but with the other hand, it will remove New Castle's ability to operate the buses. So it just doesn't seem to make sense.

Transit systems meet very important human needs, but they are not just social service programs and should not be considered that way. Transit routes are determined from an important economic standpoint. Public transportation is the most efficient means to transport people to their jobs and our city thoroughfares are limited in their capacity and in their durability.

Addressing the issue in the administration's own terms, the fiscal terms, we have to recognize that city streets are finite. They can accommodate only so much traffic. They can be widened only rarely to sustain increased volumes. Any new highway construction in our Nation's cities can come at only enormous costs, not just in construction costs, but also in right-of-way cost and in loss of property taxes; and this at a time when we are having trouble maintaining the roads in our country.

CANNOT AFFORD TO ABANDON PUBLIC TRANSIT

One of the reasons we can't afford to abandon public transit in our country is that we can't afford the highways which would be required instead. And it is not just the old cities of the Northeast or the Middle West which would be adversely affected. It is the growth cities of the country also.

My favorite example has been contributed by a member of the league's transportation steering committee, Vice Mayor Tom Volge of Tuscon, Ariz., who tells us, if memory serves me correctly on the figures, that the streets of Tuscon are designed to accommodate about 175,000 automobiles. But the residents of the city of Tuscon are operating something like 500,000 automobiles now, and that is a boom city and it needs public transit because it is more efficient and cheaper than trying to expand the highway system, which is recognized to be a Federal responsibility, to accommodate all of those automobiles.

In short, Mr. Chairman, if this Nation turns its back on public transportation, which it will if the operating assistance program is phased out, cities will increasingly become centers of congestion and pollution. Business and industry will relocate to rural and suburban locations, leaving cities to wither and die and become greater and greater public sector burdens, as they no longer have the capacity to raise revenue to meet infrastructure needs.

Public transportation is an essential, indispensible element of a balanced, national transportation system, and because the public transportation system cannot be abandoned, the Federal operating assistance program cannot be abandoned.

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We recognize that it is healthy to review national programs of all kinds, including the transit program. This is a unique historic opportunity for us all to do that. But the kind of careful, thoughtful review from which all might benefit is entirely different from, and we submit incompatible, with a sudden and unanticipated reversal of direction.

Consequently, we would support a 1-year bill including the fiscal 1982 budget instructions. This would provide the committee time in the months ahead to consider a comprehensive bill to meet America's urban transportation needs in the years ahead. Thank you.

[Complete statement of Mr. Slapin follows:]

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TESTIMONY OF

MR. KENNETH SLAPIN

COUNCILMAN, NORWALK, CONNECTICUT

on behalf of

THE NATIONAL LEAGUE OF CITIES

Mr. Chairman and Members of the Committee. My name is Kenneth Slapin, member of the Common Council of Norwalk, Connecticut, Commissioner of the Norwalk Transit District, and Chairman of the National League of Cities Steering Committee on Transportation and Communications. I am testifying on behalf of our membership of some 15,000 direct and indirect member cities, ranging in size from New York and Los Angeles to Tipton, Indiana, and Farrell, Pennsylvania.

I should begin by advising the Committee that when our Board of Directors met earlier this year to determine NLC's response to the Administration's economic program, the Board was in agreement with many of the announced policies and goals. The Board, however, differed strongly with regard to the issue confronting this Committee today, so ably chaired by Senator Lugar.

Our Board and Steering Committee strongly oppose the Administration's proposed phase-out of operating assistance for public transportation by 1985. We do, however, appreciate the necessity for reductions in the federal transit program, and we believe that changes in its program structure should be made. Consequently, we would support a one year bill consistent with the Senate Budget Committee's FY 82 funding level recommendations.

In the next few months, we would recommend an in depth analysis of the federal role in operating assistance and a determined effort to improve and refine this program in order to provide transit operators with an incentive to improve the productivity of their transit service. The Senate made such

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an effort last year, and the new Administration has acknowledged that restructuring the Section 5 program would be consistent with efforts to target federal assistance in an equitable and constructive fashion, based upon need.

Our transit systems need revenue sources which expand to keep up with inflation; expand to meet the needs of increased ridership demand; provide built-in incentives for cost control; and provide flexibility for local decision makers to determine and adopt needed operating policies. We are hampered in our efforts to meet these goals by many problems:

-- We cannot rely on the fare box--increased fares eventually reach a point of diminishing return. A recent article reported that ridership fell 20 percent in Philadelphia, 15 percent in Chicago, seven percent in Pittsburgh, and 15 percent in St. Louis following fare increases in those cities. Even DOT Secretary Lewis has acknowledged that fares will never meet our needs--either fiscal or social.

-- Nearly half the states provide no city transit assistance. If the budget cuts are approved, it would be unreasonable to expect any additional state assistance. In fact, it would be reasonable to expect some of the states that now contribute to operating subsidies to withdraw that assistance.

-- Many local governments do not have a suitable tax mechanism to effectively fund a local transit system. Some cities are prohibited by state constitutions from raising dedicated revenues. Others are restricted by state laws imposing property tax limitations. In other states, legislatures have prohibited city governments from imposing local

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earmarked taxes dedicated to public transportation services. Thus, cities are all too often denied any alternative but the farebox. For these cities, even where there is strong public support for a local subsidy, they are prevented from taking any effective action.

Transit systems and routes are set up on a need basis. They are not set up to produce a profit, or even to recover funds from the fare box. Rather we determine routes at the local level to meet human transportation needs. We also make a public decision that from an economic standpoint, public transportation is the most efficient means to transport people to their jobs and that our city thoroughfares are both limited in capacity and in durability. Thus, as local officials, we must recognize:

- that 90 percent of Birmingham riders have no other alternative (with Birmingham's system gone, one man now pays $13 every day for taxi fare--to reach a job that pays $2.75 an hour);
- that 64 percent of the Philadelphia work force depends on transit to reach their center city jobs;
- that Ypsilanti, Michigan, contains a high proportion of near or below poverty level people. Most of these people do not have private vehicles. For them public transportation is not a convenience; it is a necessity; and
- that we cannot afford to have islands of poverty in our major urban distressed cities.

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In brief, Mr. Chairman, NLC is apprehensive that a phase-out of operating assistance will most adversely affect those cities with the highest levels of poverty and unemployment, and those most restricted in replacing lost federal operating assistance with other state or local revenue.

Mr. Chairman, transportation alone consumes more energy than the residential and industrial sectors of this nation combined. More significantly, transportation now consumes nearly 55 percent of all liquid energy consumed in this country. Of that amount attributable to transportation, nearly one half is consumed by automobiles. With increases in automobile registration one can expect petroleum consumption by automobiles to continue to increase over the next decade.

The Office of Technology Assessment expects a 20 percent population increase in the next two decades, which, together with a significant increase in urbanization and the trend toward both parents being part of the labor force, will increase automobile traffic by 75 percent--resulting in up to three times as much congestion as we experience today. If we consider that automobile transportation today accounts for an annual discharge of 80 million tons of pollutants into the atmosphere and an annual average of 48,000 fatalities and 4.4 million injuries, we can only be apprehensive about the future. And if that future is forged without any federal role for public transportation, then the impact on cities could be devastating.

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Our cities' public thoroughfares are finite. They can accommodate only so much traffic. They can be widened only rarely to sustain increased volumes. A recent Federal Highway Administration report on the status of the nation's highways noted that 25 percent of the urban roads will be severely congested by 1985 and that 50 percent cannot be widened due to adjacent development. Any new highway construction in our nation's cities now can only come at enormous expense--not just in construction costs, but in right-of-way costs and loss of property taxes. We cannot afford to abandon public transit in our country, because we cannot afford the highways which would be required instead.

If this nation turns its back on public transportation, cities will increasingly become centers of congestion and pollution. Business and industry will relocate to rural and suburban locations, leaving cities to wither and die and become greater and greater public sector burdens, as they no longer have the capacity to raise revenue to meet infrastructure needs.

NLC was pleased to learn that the Administration recognized some of our concerns on this issue and decided not to recommend a reduction in the Carter budget for operating assistance in FY 82. The problem, however, must be viewed realistically. Operating costs have increased since last year. With the recent deregulation of oil, operating costs will increase even more this year. These increased costs will be met through reduced service, higher fares, reduced maintenance, and increased city costs where state legislatures permit property tax increases or ad valorem taxes.

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The cycle I have described, unfortunately, is a Catch-22, or perhaps, in today's terminology, a reverse Laffer curve. Reduced service and higher fares lead to decreased ridership, reducing, instead of increasing farebox revenues; and reduced maintenance leads to increased operating costs and poorer service.

For all the cities which need public transit, raising fares will not pay the rising costs, and shifting the tax burden will not achieve the result of lowering the overall public-sector costs. Termination of transit operating assistance will close down or debilitate many city transit systems. It will terminate mobility for many Americans.

We believe that there is both a federal role and interest in assuring mobility for all Americans. We believe that ensuring mobility to labor and to the marketplace is essential to the infrastructure of cities. We know of no alternative to sound, well managed transit services in a balanced, national transportation system.

We do support the concept of restructuring the operating assistance program so that the federal money might be spent more effectively. The NLC committee of which I am chairman will be meeting later this month to consider, among other possibilities, the idea of an altered allocation formula, which would be an incentive to efficiency of operation and better productivity. Such an approach would help to contain operating costs. As the recent GAO report on operating assistance concluded, the Urban Mass Transportation Administration should help transit systems achieve these goals and should

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improve its administration of the federal operating assistance program, rather than hinder it or terminate it altogether.

Therefore, we strongly oppose the Administration's proposals to terminate federal operating assistance. An evaluation of the effectiveness of the existing law and program and a review of national transit policy is an essential prerequisite to any decision to reverse our national commitment. It is healthy to review national programs of all kinds, including the transit program. The kind of careful, thoughtful review from which all might benefit is entirely different from, and indeed incompatible with, a sudden and unanticipated reversal of direction. Consequently, we would support a one-year bill including the FY 82 budget instructions. This would provide the Committee time in the months ahead to consider a comprehensive bill to meet America's urban transportation needs in the years ahead.

Senator LUGAR. Thank you very much, sir.
Mr. Ronis?

STATEMENT OF LEONARD RONIS, GENERAL MANAGER, GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, AND PRESIDENT, AMERICAN PUBLIC TRANSPORTATION ASSOCIATION: ACCOMPANIED BY EUGENE M. BARNES, CHAIRMAN, CHICAGO TRANSIT AUTHORITY, AND VICE PRESIDENT OF GOVERNMENT AFFAIRS, AMERICAN PUBLIC TRANSPORTATION ASSOCIATION; WILLIAM BLUE, GENERAL MANAGER, MASS TRANSPORTATION AUTHORITY OF FLINT, MICH., AND CHAIRMAN OF AMERICAN PUBLIC TRANSPORTATION ASSOCIATION FEDERAL ALLOCATION LEGISLATIVE SUBCOMMITTEE; AND JOHN C. PINGREE, GENERAL MANAGER, UTAH TRANSIT AUTHORITY, AND CHAIRMAN OF THE AMERICAN PUBLIC TRANSPORTATION ASSOCIATION BUS SYSTEM LEGISLATIVE SUBCOMMITTEE

Mr. RONIS. Thank you, Mr. Chairman. Thank you for the opportunity to appear before this committee.

As you know, I am Leonard Ronis, general manager of the Greater Cleveland Regional Transit Authority and president of the American Public Transit Association. And with me today are Eugene M. Barnes, chairman of the Chicago Transit Authority and APTA vice president for government affairs; William Blue, general manager of the Mass Transportation Authority of Flint, Mich., chairman of our Federal allocation subcommittee; and John Pin-

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gree, general manager of the Utah Transit Authority, chairman of APTAs bus sytem legislative subcommittee.

We are here today to convey to you some of our concerns regarding upcoming transit legislation. We would like to state at the outset that we do not see an immediate need for Federal authorizing legislation without carefully considering proposals for a more efficient method of delivering federal dollars. We would like to work with you in the forthcoming weeks and months to develop such legislation.

As you know, last Thursday the Gramm-Latta proposal on the budget was passed by the House of Representatives. It goes beyond the Reagan administration's mass transit cutbacks. With Gramm-Latta, transit operating assistance funds could be reduced by $260 million this year, with apparent attempts to eliminate operating assistance entirely as early as fiscal year 1983.

We disagree with this.

The expenses of running transit service are paid by a combination of fares and assistance from local, State, and Federal sources. While for many communities the federal share of operating costs represents the smallest slice of the pie, about 15 percent nationally, it is nevertheless a critical element.

Today we are operating more than 2 billion vehicle miles of transit service each year, with about 16,000 rail cars and 53,000 standard buses. Base fares average 45 cents, having risen 18 percent over the last year.

In 1980, about 4,500 new buses were delivered, at a price near $130,000 each. Fuel to run those vehicles cost transit operators about a dollar per gallon, about 30 percent more than last year. I might add that in Cleveland I'm paying $1.14 per gallon for diesel fuel. At the beginning of 1974, I was paying 11.4 cents per gallon for diesel fuel. It has risen 1,000 percent.

Passengers logged 35 billion miles on transit last year.

TRANSIT FUNDS PROVIDE NUMEROUS BENEFITS

The funds expended for transit have provided a number of benefits:

First, we have been able to provide needed mobility in cities of all sizes; increasingly in rural areas, millions of Americans have chosen to depend upon transit for access to employment, shopping, services, education, and health care.

Second, public transit has enabled us to be less dependent on the automobile in areas where auto use is inappropriate. This has reduced the need for money to be spent on new urban road systems and has reduced consumption of petroleum fuel.

There is another set of benefits associated with transit—the impact of public transportation on the economy and the business community.

APTA is currently conducting research on these impacts. The results so far indicate that convenient, effective public transportation is very much a factor in such measures of local economic vitality as development, retail sales, employment and tax revenues.

Business needs and supports mass transit. Transit means jobs. It means access for workers and customers. It means business invest-

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ments in our new urban centers and the revitalization of our downtowns.

In short, not only does transit serve people, not only does transit conserve energy, not only does transit preserve the environment, but transit means business.

I would like to repeat, transit means business.

In the area of operating assistance, Mr. Chairman, the administration has proposed eliminating Federal operating assistance for transit by 1985. And Gramm-Latta could eliminate aid earlier. Small urban and operating aid would be terminated in 1982. APTA is committed to a Federal program to help transit systems operate and maintain their service.

The most crucial element in this discussion is the point that public transit is a critical public service. As citizens, we have established a policy that transit, like police, fire protection, sanitation, and schools, is a necessity for our citizens, a service provided for the commmon good.

When Congress established the operating assistance program in 1974, it was for the express purpose of keeping fares low, expanding service, and increasing ridership. Transit has maintained fares; transit has expanded service; and transit has increased ridership.

I would comment that in my city of Cleveland, transit ridership, since 1975, is up 73 percent. And contrary to some statements that were made earlier here today, transit riding in the country generally has gone up 25 percent in the last 4 years. But the costs of operating this vital public service have risen greatly during the past several years—we recognize that.

What will happen without Federal operating assistance for transit? Service will be reduced, fares will rise an average of 40 percent, and ridership will drop. Such a situation would be a tragic step backward. The absence of Federal assistance will shut down many transit systems in this country.

Again, I would like to interpolate. We were given some figures a few minutes ago about transit costs rising roughly 6 cents per year. The average fare in my city today is about 42 cents. That fare produces approximately $28 million a year. I get $16½ million in Federal operating assistance. That's about 60 percent, which means that if you take away that $16½ million from my transit system, my fares automatically have to go up about 60 percent, or about 25 cents.

We believe strongly that there is a continued need for a Federal role to assist transit operation and maintenance. And we believe that this role can be carried forward even within the constraints of overall budget reduction. And we wish to propose that it may be accomplished by a revision of the program for distribution of Federal transit capital and operating assistance.

This proposal represents a continuation of a discussion between the transit industry and the Congress which began during the last session and responds to an expressed interest in block grants, greater local flexibility and the separation of loads.

We believe that many Members of Congress are supportive of transit and the need for operating assistance and agree that a change in the method and formula for allocation of funds is essential.

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Therefore, we propose that Congress adopt the block grant approach to the distribution of both capital and operating assistance, which would give the governing bodies of local transit systems the flexibility to determine how the funds will be spent.

SEPARATE PROGRAMS FOR RAIL AND BUS SYSTEMS

Our plan would establish separate programs for rail and bus systems and, simply stated, would provide that, with the adoption of reasonable formulas based upon service provided, funds would be allocated to local transit bodies, which would determine what funds would be spent for capital, what funds would be spent for operations, and what funds would be spent for maintenance. At present, we envision this to apply to urban areas above 200,000 population.

Some suggested approaches for implementing this type of proposal are provided in greater detail in the written testimony that is being submitted for the record.

I urge you to support continued Federal assistance for operation and maintenance of transit service. Our proposal permits this to be accomplished without hampering the effort to achieve budgetary economies. Apart from the issue of delivery of the Federal dollar, our needs for the replacement and expansion of bus fleets and facilities, as well as for rail modernization and new starts, are formidable.

Although the administration, through its budget documents, has demonstrated support for the bus capital program and the upgrading of older rail systems, significant cuts are proposed in the new rail starts and extensions category. New rail construction currently underway must continue to completion.

While we recognize that the Nation's current economic condition may require some deferral of capital expenditures, it is urgent that preliminary engineering and planning for unbuilt systems and segments continue. Proposed projects must not be foreclosed before full documentation of their cost and benefits can be established.

The transit capital program is essential to retain and develop a modern and efficient stock of vehicles and facilities. This commitment will pay off in the ease of mobility, reliable service, energy savings, and the assurance of a basic support system for the Nation's business and commercial activities.

The administration has proposed significant regulatory reform for transit. APTA commends the President on his steps to improve efficiency through the elimination of unnecessary and costly regulations. We support the application of strict cost-benefit analysis, documenting the impact of new rules.

As you know, a maze of regulations has been imposed on transit operators during the last few years. Many of them demand complete elimination, and others strict reform. Let me review just a few.

Public hearing requirements—we welcome the administration bill which moves toward a locally determined public comment process.

Charter and school bus regulations—transit operators are severely constrained as to the volume of charter and school bus service they may provide. However, often these services can be operated

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most efficiently by the transit system and bring in much needed revenue to offset expenses, while providing a needed public service. APTA proposes that these regulations be eliminated.

Procurement regulations—the procurement process should be streamlined with UMTA involvement limited to the assurance of a competitive and auditable bid process.

With regard to transportation for the elderly and handicapped persons, we reiterate our support of a flexible policy which permits local discretion in providing mobility for all citizens; however, providing that mobility costs money and may be impossible if funds are reduced.

APTA urges that the Departments of Justice and Transportation immediately place a moratorium on the current 504 regulations and initiate changes in those regulations. Such a procedure could be followed by congressional action.

Labor protection, 13(c)—although we support the principle that Federal grant funds should not be used to worsen the conditions of existing transit workers, we believe that the 13(c) process itself should be better managed.

In summary, Mr. Chairman, we have today brought up some very serious issues that are at the very core of the transit program. We have suggested modifications that will have a long-reaching effect on public transit, such as the restructuring of the Federal capital and operating assistance programs and sweeping regulatory reforms.

Certainly the Congress, the administration, and the transit industry should weigh these modifications carefully.

Let me, therefore, reiterate what I said in my opening: There is no immediate need for transit authorizing legislation before we have an opportunity to explore reasonable funding alternatives.

Let us all, the Congress, the administration, and the transit industry, work together and take time to think the transit program through, clearly and without haste.

I thank you for the opportunity to testify.

If you have any questions, my colleagues and I are happy to reply.

[Complete statement follows:]

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TESTIMONY OF

LEONARD RONIS

GENERAL MANAGER OF THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

AND

PRESIDENT OF THE AMERICAN PUBLIC TRANSIT ASSOCIATION

Good morning, Mr. Chairman, and thank you for the opportunity to appear before this committee. I am Leonard Ronis, general manager of the Greater Cleveland Regional Transit Authority and president of the American Public Transit Association. With me today are Eugene M. Barnes, chairman of the Chicago Transit Authority and APTA's Vice-President of Government Affairs; William Blue, general manager of the Mass Transportation Authority of Flint, Michigan and chairman of the APTA federal allocation legislative subcommittee; and John C. Pingree, general manager of the Utah Transit Authority and chairman of the APTA bus system legislative subcommittee.

The Role of Transit

As you know, last Thursday the Gramm-Latta proposal on the budget was passed by the House of Representatives. It goes beyond the Reagan Administration's transit cut-backs. With Gramm-Latta, transit operating assistance funds could be reduced by $260 million this year, with apparent attempts to eliminate operating assistance entirely as early as Fiscal Year 1983. We disagree with this.

The expenses of running transit service are paid by a combination of fares and assistance from local, state, and federal sources. While for many communities the federal share of operating costs represents the smallest slice of the pie--about 15 percent nationally--it is nevertheless a critical element.

Today we are operating more than two billion vehicle miles of transit service each year with about 16,000 rail cars and 53,000 standard buses. Base fares average 45 cents, having risen 18 percent over the last year. In 1980, about 4,500 new buses were delivered at a price near $130,000 each. Fuel to run those vehicles costs transit operators roughly $1 per gallon, about 30 percent more than last year. Passengers logged 35 billion miles on transit last year.

My system in Cleveland mirrors those statistics, with 472,000 transit riders on an average weekday. Cleveland riders currently pay 25 percent of the systems's operating costs from the farebox.

In Cleveland's case, it was a 1975 campaign by citizens which led to the formation of a centralized transit authority. Since then, there has been a 30 percent increase in service, 300 new buses, new light

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rail cars, complete rebuilding of the Blue and Green light rail lines, and intitiation of central maintenance facilities for bus and rail.

But much remains to be done. We must complete the rehabilitation of the system, add maintenance facilities, acquire at least 500 more new buses, and complete the planning for rapid rail expansion.

Benefits of Transit

The funds expended for transit have provided a number of benefits. First, we have been able to provide needed mobility in cities of all sizes, and increasingly in rural areas. Millions of Americans have chosen to depend upon transit for access to employment, shopping, services, education, and health care. Second, public transit has enabled us to be less dependent on the automobile in areas where auto use is inappropriate. This has reduced the need for money to be spent on new urban road systems, and has reduced consumption of petroleum fuel.

Business

There is another set of benefits associated with transit--the impact of public transportation on the economy and the business community. APTA is currently conducting research on these impacts. Results so far indicate that convenient, effective public transportation is very much a factor in such measures of local economic vitality as development, retail sales, employment, and tax revenues.

Business needs, and supports, mass transit. Transit means jobs; it means access for workers and customers; it means business investments in our new urban centers and the revitalization of our downtowns.

TRANSIT MEANS BUSINESS when we deliver a significant portion of center city employees to their jobs. In Chicago and New York, about eight out of ten center city employees use transit. In Cleveland, Seattle, and Portland, about half the center city workers depend on transit. Even in a small city like Madison, Wisconsin, thirty percent of the commuters going downtown travel by transit.

TRANSIT MEANS BUSINESS when we deliver customers to retail stores. In Portland, J. C. Penney's estimates that 60 percent of its customers arrive by bus. The Gallery, a large Philadelphia complex, reports that 67 percent of its customers arrive by bus or train, as do nearly all of its employees.

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TRANSIT MEANS BUSINESS when the location of transit routes sparks orderly development as it is doing in San Francisco, Atlanta, Miami, and Washington, D. C. And, as it did in Cleveland. One Portland real estate firm estimates that land values are nearly $3 per square foot higher when property is located near the light rail corridor currently under construction. The New York development firm of Helmsley-Spear estimates that 85 percent of its location decisions are based on proximity to transit.

TRANSIT MEANS BUSINESS when transit service contributes to urban development. The transit malls in Long Beach, Denver, and Iowa City are anchors for urban redevelopment in those cities.

The support is not just for sophisticated rail projects and big city plans. For every New York, Chicago, and Los Angeles, there are 100 Montereys, Iowa Citys, and Corpus Christis. Transit's contribution to those cities is measured in workers able to reach their jobs, shoppers going into stores, and dollars contributed to the economy. Transit contributes to mobility, energy conservation, and the fight against inflation, as well as urban revitalization and economic stability. In short, transit makes the difference between a healthy, vigorous local economy and one heading toward disaster. That's worth paying for. The federal assistance provided to transit has resulted in a great deal more than simply the purchase of buses and rail cars.

In short, not only does transit serve people. Not only does transit conserve energy. Not only does transit preserve the environment, but TRANSIT MEANS BUSINESS.

Operating Assistance

Mr. Chairman, the Administration has proposed eliminating federal operating assistance for transit by 1985 and Gramm-Latta could eliminate operating aid earlier. Small urban and rural operating aid could be terminated in 1982.

APTA is committed to a federal program to help transit systems operate and maintain their service.

The most crucial element in this discussion is the point that public transit is a critical public service. As citizens, we have established a policy that transit, like police, fire, sanitation, and schools, is a necessity

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for our citizens--a service provided for the common good.

When Congress established the operating assistance program in 1974, it was for the express purpose of keeping fares low, expanding service, and increasing ridership. Transit has maintained fares. Transit has expanded service. Transit has increased ridership. But the costs of operating this vital public service have risen greatly during the past several years.

Labor costs, which account for some 75 percent of transit operating budgets, have risen like wages in every other industry. But unlike private industry, transit grants bring with them federal and state regulations which hamper transit's ability to win contract provisions which would control costs and increase productivity.

The cost of diesel fuel and uncertain supplies have put transit in a double bind.

Maintenance costs are increasing as equipment--with features mandated by federal rules--becomes more complex and more expensive to keep in good condition.

Still, operating costs are covered primarily through farebox revenues and state and local funding.

Now the Administration is asking state and local governments to pick up the federal government's share of transit operating assitance. This may be asking the impossible.

What will happen without federal operating assistance for transit? Service will be reduced, fares will rise an average of 40 percent, and ridership will drop. Such a situation would be a tragic step backward.

We believe strongly in a continuing federal role to assist operations and maintenance of service. We offer the following proposal for the distribution of federal transit capital and operating assistance. This represents a continuing discussion between the industry and the Congress which began last session. The proposal builds upon concepts expressed at that time and responds to interest in block grants, local flexibility and the separation of modes. We believe that many members of Congress are supportive of transit and operating assistance and agree that a change in the allocation formula is essential.

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Proposal

We are proposing that Congress adopt a block grant approach to the distribution of capital and operating assistance to give local transit systems the flexibility to determine how the funds will be spent. Our plan would establish separate programs for rail and bus systems and would allow for money to be targeted to maintenance programs. At present, we envision this proposal for urban areas above 200,000 population.

The proposal addresses several specific issues. First, it is attractive as it adopts the block grant concept thereby emphasizing local decision making ability. Additionally, the program could be accommodated within current budget constraints. Second, it recognizes the significantly different needs of bus and rail transit systems. Finally, the proposal provides a great deal of flexibility. It can be used to target support to maintenance assistance rather than unspecified operating aid.

Details of our proposal are contained in our testimony which will be submitted for the record. I urge you to support continued federal assistance to operate and maintain transit services.

Capital Assistance

Apart from the issue of delivery of the federal dollar, let me turn to our needs for upgrading vehicles and facilities. Public transportation is dependent upon an up-to-date fleet of vehicles and accompanying modern, efficient facilities to access, house, and maintain that fleet.

UMTA capital assistance is used for replacement and expansion of bus fleets and facilities as well as for the purchase of rail cars, rail system modernization, rail facilities, and new starts.

Today, the bulk of capital funds is distributed under the discretionary Section 3 program. Capital money for bus and bus facilities is apportioned under the Section 5 formula program as well. In addition, over $1 billion available under the Section 5 operating assistance program can be used for capital purposes. As noted, we are proposing changes in the program structure.

Public transportation's needs continue to be formidable. In many respects, the transit community is still in

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a catch-up position, still bringing its capital assets into alignment with demand. Constraints on local resources as well as those at the federal level have led to less than desirable replacement cycles and restrained expansion programs. While 12 years is considered to be the rule-of-thumb life of a bus, approximately 20 percent of the nation's fleet is older.

Bus and Bus Facilities

The motor bus is and will continue to be the centerpiece of the American transit fleet. Buses will be the form of transit to serve the majority of American cities. For communities operating or building rail networks, the bus plays a prominent role, offering feeder and other complementary services. Today, approximately 54,490 buses are in service in this country. About 14,000 are over 13 years of age.

The first concern of the national bus program will be to replace vehicles that are worn out and can no longer offer efficient, comfortable, safe, cost-effective service.

Replacing the 14,000 existing buses over 13 years old and maintaining a current fleet will require 47,200 new vehicles between 1982 and 1991.

At present, the 16,200 buses needed in 1982 to update the fleet would have to be spread over a number of years. Current capacity suggests we have the capability of producing about 6000 buses per year.

Bus Facilities

Assistance for the purchase of vehicles cannot be separated from the need for facilities in which to store and maintain fleets. Public transit efficiency and dependability are integrally related to the level of maintenance which is conducted and the utility of support structures. Maintenance and storage activities are strongly effected by the age, efficiency, and compatibility of facilities and equipment.

Facility needs fall into both rehabilitation and new construction categories. Current rehabilitation needs are estimated by UMTA to be approximately $3.3 billion at 1981 levels. For new construction, local community experience suggests that a maintenance facility is required for every 200 additional buses. Both APTA and UMTA agree on that conventional wisdom.

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Rail Modernization and Rolling Stock Replacement

Some of the most acute capital demands in public transit exist in cities with older rail systems in need of upgrading and renovation.

Many of these networks have been in operation since the early part of the twentieth century and are integral parts of the cities in which they operate. Over the years, rail systems in Boston, New York, Philadelphia, Chicago, Cleveland and other cities have been responsible for installing a strong transit orientation and protecting center city areas from declines which have occurred elsewhere.

Today these systems require a variety of improvements including new cars, station rehabilitation, track and way upgrading, and maintenance storage facilities.

Mr. Chairman, as you can see the need is for equipment as well as for the resources to operate and maintain that equipment.

President Reagan's Proposal

The Administration through its budget documents has demonstrated support for bus capital and rail modernization programs. It is in the new rail starts and extensions category that the most severe cuts are proposed.

While we recognize that the nation's current economic conditions may require some deferral of capital expenditures, it is urgent that preliminary engineering and planning for new rail systems and extension continue. Proposed projects must not be foreclosed before full documentation of their costs and benefits can be established.

This entire transit capital program is essential to retain and develop a modern, efficient stock of vehicles and facilities. It is a commitment that will be repaid in ease of mobility, energy savings, and the assurance of a basic support system for the nation's business and commercial activities.

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Regulation

The Administration has proposed significant regulatory reform for transit. APTA commends the President on his steps to improve efficiency through the elimination of unnecessary and costly regulation. We support the application of strict cost-benefit analysis documenting the impact of new rules.

As you know, a long series of regulations have been imposed on transit operators during the last few years. Many of them demand complete elimination and other strict reform. Let me run down just a couple:

Public Hearing Requirements: Transit systems must hold public hearings for what are often very minor service changes We welcome the Administration bill which proposes elimination of the federally mandated criteria for hearings on these revisions and substitutes instead a locally determined public comment process.

Charter and School Bus Regulations: Transit operators are severely constrained as to the volume of charter and school bus service they may provide. However, often these services can be operated most efficiently by the transit system and bring in much needed revenue to offset expenses. APTA proposes that these regulations be eliminated. Clearly, the local transit system is in the best position to determine the level of charter and school service participation which can be offered efficiently.

Procurement Regulations: At present, the federal government is deeply involved in the procurement of equipment. These purchases are subject to numerous regulations probing into mechanical and technical details. The procurement process should be streamlined with UMTA involvement limited to the assurance of a competitive and auditable bid process.

Let me turn to two other regulations in greater detail:

Transportation for Elderly and Handicapped Persons: There is general agreement among transit operators on another major regulatory issue, that being the Section 504 accessibility requirements on the transportation of the elderly and handicapped. The issue of DOT's 504 regulations has dominated the transportation industry for entirely too long. The situation has changed in the last few months. With the Administration's call for

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operating assistance to come to an end, transit systems will be hard pressed to continue service to the general public. And even the "local option" in lieu of the current 504 regulations will carry great costs. The question now becomes whether transit is to spend great amounts of quickly diminishing funds on special service to the handicapped and elderly while at the same time being unable to keep buses and trains running for our regular passengers.

While our policy has been to attempt to provide mobility for all citizens, it may be impossible given the funds with which we have to work.

APTA urges that the Departments of Justice and Transportation initiate an immediate change to the current 504 regulations. Such a procedure could be followed by Congressional action.

Section 13(c) Labor Protection: With respect to the 13(c) labor protection issue, the vast majority of transit operators support the principle that federal grant funds should not be used to worsen the conditions of existing transit workers. However, there is wide agreement within the industry that the 13(c) process should be improved. Particularly troublesome to many operators is the extent to which 13(c) has been used to infringe on and override state labor laws and policies, the delay in working out 13(c) agreements at the local level, and the way in which the 13(c) process intrudes on the local collective bargaining process in such areas as contracting out for work.

APTA agrees with UMTA Administrator Arthur E. Teele, Jr., that many of the industry concerns with 13(c) are based not on the statutory language, but on the interpretation and administration of the statute. For that reason, APTA supports improvements to the management of Section 13(c) that would: (1) reaffirm that Section 13(c) was not intended to abrogate state labor laws and an announcement by the Department of Labor that it would not require locally negotiated 13(c) arrangements that conflict with state law: (2) establish a streamlining of the 13(c) process by a "negative declaration" procedure, rigid time limits on all parties, and a procedure in the Department of Labor to resolve issues on which local agreement cannot be reached; and (3) prevent 13(c) from being used to limit contracting out for services or the rehabilitation of older buses where such a contract would be permitted under an existing collective bargaining agreement.

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Summary

Mr. Chairman, we have today brought up some very serious issues that are at the very core of the transit program. We have suggested modifications that will have a long-reaching effect on public transit--such as the restructuring of the federal capital and operating assistance programs and sweeping regulatory reforms.

Certainly the Congress, Administration, and transit industry should weigh these modifications carefully.

President Reagan's program for economic recovery with respect to the transit program could be fully implemented in Fiscal Year 1982 through the appropriations process without any need for hastily-drawn legislation. Let me, therefore, reiterate what I said in my opening--there is no need for transit authorizing legislation this year. Let us all--the Congress, the Administration and the transit industry--take a year to think the transit program through clearly, and without haste.

Thank you for the opportunity to testify. If you have any questions, my colleagues and I are happy to reply.

Senator LUGAR. Thank you very much, sir.

Let me note that Senator Heinz and I have made careful notes of the testimony. I think both of us have underlined a good number of passages on which there is agreement and some disagreement. This is a very serious endeavor, and you have approached it that way, as has the committee.

I think the dilemma is understood. But let me just try to express for a moment the ground rules under which we're operating.

The Senate and the House of Representatives have both acted upon well-publicized budgets, after very extensive debate. The country has witnessed this, the President has been heavily involved.

Yesterday, conferees of the Senate and the House met and resolved—at least as far as I know—most of the issues between those two budgets. The one that the Senate passed, 78 to 20, this week and the so-called Gramm-Latta proposal that has been mentioned, that the House passed in a well-publicized situation the week before—these budgets place the constraints that I mentioned in my opening statement. This means, as a matter of parliamentary procedure, that this subcommittee and the full committee do not have the option of proceeding to the floor with recommendations that exceed those budgets. If we do, we are subject to a point of order, and the Chair will rule that the whole proposition is out of order.

I think it is an arguable proposition as to whether the amounts of money that are proposed by the administration or those as reduced by Gramm-Latta are appropriate or not. And many have argued this on the floor of both the House and the Senate in the past few weeks, as well as in the country. But those limits, with regard to the transit functions, are there; and they will not be exceeded by the Congress as we take a look at this legislation.

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FLEXIBILITY BETWEEN OPERATING AND CAPITAL EXPENDITURES

Now there may be some flexibility within these limits. But they are difficult dilemmas, of course, between operating and capital expenditures.

There has been a suggestion that conceivably we might forestall the whole process, and that is either have a 1-year bill, which presumably leaves, as one witness said, the structure intact, even if we don't fund parts of it or forget other parts, hoping for better days to come along. And that, I presume, is one option that we have.

But within these budget constraints, you could leave things as they are, but lop off certain elements of transit, but in any case we could tailor it within the overall structure.

I think that all of you know this, and probably the public as a whole knows this. But it has not yet sunk in altogether.

Now, let me add, just parenthetically, that the issue of mass transit arose recently as Senator Moynihan, the distinguished Senator from New York, raised an amendment to the Senate budget—just Wednesday, as I recall—and he suggested, for example, that $200 million allocated to water projects in the country, be deleted and mass transit ought to receive $100 million.

Senator Moynihan's motion, for which I voted, failed—I supported Senator Moynihan but his amendment failed rather decisively.

The suggestion that in an up-or-down vote, the Senate at this particular point is going to favor mass transit simply is not accurate.

So, we are between a rock and a hard place, which is an unpleasant situation for this subcommittee, and for you, and for anyone who is involved in the process.

And I simply want to say that I appreciate the restraint where it was possible, the good humor with which you've approached this task, because it is not a pleasant one. And having gone through it already with housing, this subcommittee, as I say, has either an extraordinary opportunity or an extraordinary burden in working toward the ends desired by the citizens in both of these areas.

Mayor, do you have a comment?

Mayor WILSON. If I may, just a moment, Mr. Chairman, I would just respectfully like to point out that the Conference of Mayors block grant proposal embraces the administration's figures and does not in any way violate those figures or exceed those figures. And it is simply a matter—we raise the issue as to the structure of the program and the distribution within the framework of the administration's budget.

Senator LUGAR. I appreciate that point. And I will ask staff specifically to think through carefully how the block grant approach, which several of you have suggested, can meet the outlay dilemmas that we have in the budget legislation, and at least to frame what is a potential alternative here. I think that is a constructive suggestion, and I suspect we just simply will have to take a look at it, as to how it finally reduces itself; right. The concept is a good one. It is certainly in vogue, and it is being debated in many committees around these hallways right now.

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OPERATING FUNDS TO DISCRETION OF LOCAL COMMUNITY

Mr. RONIS. Senator, I certainly had no idea of what these other gentlemen were going to say. I'm very pleased that we all seem to be pretty much unanimous. I think we accept the practical reality of the budget limitations. And what we are saying to you is that if you are throwing a greater burden back on the local community, give that local community the discretion to determine how those funds will be spent, instead of having that determination by arbitrary formulas here in Washington, so much for rail and so much for bus and so much for maintenance facilities and so on.

I don't believe that there are any transit systems doing what was said here before, taking buses out of service with only 100,000 miles. I would like to know where that exists, if anywhere. I don't believe that that happened.

The local community and the local transit body has the responsibility of running the service in that community. They have a lot of people, as you well know, from the city that you come from—they have a lot of people out there watching precisely what they are doing, how they are doing it, and how effectively they are doing it. They are in a glass house all the time.

I think if we throw that ball back to them and say, "OK, this is the amount that is available to you as your portion, as your fair portion of the Federal allocation. Now, you decide whether you want to buy buses this year, or whether you want to hold your fare level this year, or whether you need a new bus garage, or whether you want to start to build a small rail line, or something like that."

Mr. SLAPIN. Senator, as I understand it, the League of Cities' proposal is more or less consistent with the budget limitations for fiscal 1982. The problem is, of course, in the outyears. And that is why we have proposed the 1-year bill, holding onto the present structure and studying the problem for future years.

As I also understand it, the reduction is for the subject areas under the entire committee's jurisdiction, which of course goes beyond transit and providing at least a limited range of flexibility.

In fiscal 1982, I think we all accept, reluctantly, the fact that the operating assistance program, while maintained, would be in a constant number of dollars, which is, of course, a lower number of real value dollars. And that is why we have taken the position, while a number of possibilities can be examined, the most judicious thing for 1982 would be to keep the present structure in place and try to work out some improved transit programs, such as we have proposed for future years. And it may well be that in future years the budget process will enable some adequate funding, maybe not a perfectly satisfactory level of funding, for these programs.

Mr. OLIVER. Mr. Chairman, I would just like to make a statement to say that—this is not on behalf of NACO, just so it is clear that I am speaking now on my own reaction: I sympathize with you and other members of the Senate who chair subcommittees that have to wrestle with how to implement a program that you as an entire Congress said we are going to do. It seems to me to be an almost totally impossible situation. I suspect—and what ran through my mind when I was asked to come here and testify—was I not wasting my time and effort?

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But I couldn't avoid the opportunity of getting that on the record, because of time restraints that you have outlined, and what the Congress, the actions of Congress have taken, that we are really reduced to a position of accepting pretty much in toto the administration's solution of how they are going to make this budget work.

And it seems to me that the members of this committee and other committees that have to deal with specific problems that we have been developing and trying to address through the Congress over the years, which has now really, in one action of the Congress, in adopting a budget which makes impossible those programs continuing to work—and how do we eliminate some of them, and how do we curtail others? How do we deal with the problem of whether we do it all this year, or project it out over a 3- or 4-year period, seems to be an impossible situation. I sympathize with you in your individual tasks, only to the effect that you all went along with the program.

Senator LUGAR. Well, I think that is fair enough, and of course, I did vote for the budget. I was one of the 78 in that broad, bipartisan support.

I think the dilemma that we face, each one of us, whether we're for mass transit or in other cases wearing other hats—in this very committee room yesterday or the day before, Chairman Garn was conducting hearings about basic catastrophes in our financial systems in the country. People are in trouble throughout the country. And the dilemma of mass transit is not the only dilemma involved. There are rather wholesale problems.

And so, in a bipartisan sense, a majority of Democratic Senators and Republican Senators voted for these budget constraints, and even then have come under some criticism for leaving a projected deficit of $30, $40, or $50 billion.

I suspect the fare increases are going to go up. I think there will be additional moneys coming from Federal, State, and local authorities in some form, and a continued commitment to mass transit in the country. But very clearly there will be a reduction in a fairly short period of time.

Mr. OLIVER. I would just like to make one suggestion. I think that the operating assistance is so important to so many communities that if the subcommittee would really take a look at the possibility of maintaining the operating assistance with a requirement on the local level.

As I understand, there are inequities throughout the country, but I think if you develop this system, requiring a certain level of participation out of the farebox, et cetera, to qualify for operating assistance, that it would be a much more equitable way of dealing with that situation. And I would hope that you would give that some consideration.

Mr. PINGREE. Mr. Chairman, I appreciate the opportunity to respond. I come from a system that is unique in that it has only buses. And in March, Senator Garn came and spoke to our association. And I understood him there to say that this will not change. It will basically remain as the suggestion by the administration. In fact, we see that now to be true.

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CONCERNED ABOUT DISTRIBUTION OF DISCRETIONARY FUND

But also, I understood him to say that we as an association and an industry would have an opportunity to participate in how that should be split or how that should be determined, where the money should go. I have some very serious concerns about putting all of that money into a discretionary fund. I think there is some evidence indicating that those who have better access to Washington—have better grantsmanship—will get more of those moneys. It is a major undertaking for my property to come here. I can't come in 1 day. It takes me a 2-day trip.

And so, I would hope that some type of—you could give us some time to work with your organization, your staff, and also that we could develop some type of division, so that bus properties are not going to be hurt in this program; rail properties won't be hurt. There will be distribution based on some method that will allow each to not be destroyed. Also, let me just make one other point, and that is, it was alluded to that transit has not really grown much over this decade.

In our system, we have grown 700 percent, and the Federal Government has been very strong in helping us. They have invested basically $40 million in our area for public transit. And it would seem a shame to me that no moneys be continued and that basic investment be lost by not continuing some type of support for us in the future.

Mr. BLUE. Thank you very much, Senator. I also appreciate the opportunity to speak this morning. A couple of comments were made in earlier testimony that I thought I might amplify. Senator Heinz asked Secretary Lewis about the statement that poor people will not bear the brunt of fare increases. The response was given as to current DOT estimates as to what that poor and elderly—or the poor and elderly mix is. I would hope that this committee and subcommittee would be very careful in getting accurate data from the Department in terms of what the national mix is, in terms of who is being served on public transit.

SCHOOL TAXES

You and I had, I think, the privilege of serving on our local board of education in different cities at the same time. And I know the question came up: Where can I ever get an assignment where I will have more of a quandary in solving problems? I think you have found that this year. But one of the things we had to do was speak to senior citizen groups and defend the use of school taxes. Senior citizens pay school taxes and that issue as to why they should go out and support the school budget or maybe stay home—we have been through that one.

Now, we come to an assignment that involves transportation and dignity for an awful lot of the older citizens, who pay the school taxes. And we raise the question of getting more out of the farebox. Now, on the board of education, I never had the courage to propose the establishment of a turnstile at the school door and the classroom door so only those students could use the door if their parents paid for it.

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And I am trying to come up with some sense of equity on mobility and dignity in paying school taxes, and I know that you have a special feeling for that.

Senator Heinz asked about, what about Altoona? You might have listed 100 transit communities in the country, including yours in Indiana and mine in Michigan. The answer was, I thought, thoughtful. It said that, given their level of Federal operating percentage, that they will be in some difficulty. I think a more succinct term might be "absolutely dead in the water," and we know that.

Someone talks about the average increase in fare. It would take an average increase of 17 cents. Every time I hear "average," I think of the fellow who had his head in the oven and his feet in the ice water, and on the average, he felt pretty good. I think that 17-cent average in Altoona, and Flint, and Fort Wayne, and Lafayette, and a variety of other places is going to be far higher than 17 cents.

And finally, Mr. Chairman, with the reductions in revenue sharing and the other burdens, obviously, all of our local mayors are going to be in a very difficult position to make up, in a very quick period of time, with local subsidy, the Federal fall-off. And it is a thoughtful process, and I hope we will work together, and I don't think there are any easy answers.

Thank you very much.

Senator LUGAR. Thank you.

Yes, Mr. Barnes?

Mr. BARNES. Thank you very much, Mr. Chairman. I really appreciate the opportunity to come before your subcommittee. Being a representative of probably the oldest property here, and probably the second-oldest property in the country, we have unique problems that address themselves to that particular issue. Being a rail-bus mixed property, the kind of thing that has indicated to this subcommittee, to yourself, and the subcommittee, we are, in Chicago, on both sides of that fence.

One of the things that I would like to point out, from a question raised earlier and addressed by the Secretary as to what kinds of people are basically served by the system, fortunately, we in Chicago have just taken a ridership profile in the last 5 months. We find that in our rail system, for instance, that the average income of 71 percent of our rail riders—which consists of unlinked trips, which is about 154 million plus—that 71 percent of those people have incomes of less than $20,000 a year.

We also find that 65 percent of those people that are using our rail system in Chicago do not have automobiles available to them for that same trip, those trips that they are taking. Also, in addition to that, 81 percent of those using the rail system are employed in some fashion related to either the central city or the perimeters around the central city area.

SERIOUS LOCAL FUNDING PROBLEMS

In addition to that, we in Chicago, as I'm sure has been well discussed in the media, are facing some very, very serious problems relative to our local funding situation in Illinois. I'm sure that our Governor has been here to Washington and has expressed that, and

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the mayor of the city has. But this additional impact of the phasing out of Federal assistance simply compounds that situation that we are faced with currently.

I believe you asked the question, or the question was submitted to the Secretary, relative to the amount of fare increase that would be necessary in Chicago. And I believe the answer is something around 8 cents. In the figures that our financial people have developed, in the last 10 days, as a matter of fact, indicate to us that that fare increase with the phaseout of Federal funds, in a combination of service cutbacks and other local resources available to us, would be more like 15 to 20 cents fare increases on top of the responsibilities that we have locally.

Right now, one of the situations that we are faced with in Chicago—and I am sure that many of the other systems in the makeup of the revenues available to them of operating assistance find themselves in the same position—is by and large with the recovery from the farebox. In the case of Chicago it is about 54 to 55 percent. But in addition to that, the major part of our resources is a 1-cent sales tax that we impose locally.

Basically, the makeup of our operating funds that we use to operate is pretty fairly close to 90 percent local participation. And I don't know if those kinds of figures have been considered in this overall situation that we are faced with now.

I think that the commitment is there locally, at least in the Chicago area, and I'm sure in most other systems the commitment is there. The problem we are faced with now is a situation where our fare structure will move to a level where it would be a deterrent instead of attracting riders in the future. We may very well get to that point of diminishing return, whereas not only will the ridership decrease, although the fares would increase substantially along with that. But we will get to a point where the ridership decreases and the fares also decrease, and we will be to the point of diminishing returns and then we will be faced with a serious consideration of drastic cutbacks or some type of major reduction of service that we have been faced with before in Chicago.

I appreciate your affording us the time to come here and express that to you.

Senator LUGAR. Thank you very much. Our colleague, Senator D'Amato from New York, will have questions for some of you, and he would like for you to respond as you receive those, as would the Chair, for the benefit of the sucommittee members. He was unable to be present today, but wanted to participate in this manner.

At this point, I simply will thank all of you for taking time for what I think has been very constructive testimony, and likewise for giving us your ideas. And if there are points later on which we need consensus, we will be in touch. We thank you for coming to testify, and the hearing is adjourned.

[Whereupon, at 11:45 a.m., the hearing was adjourned.]

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TRANSIT ASSISTANCE ACT OF 1981

WEDNESDAY, MAY 20, 1981

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met at 2:05 p.m. in room 5302 of the Dirksen Senate Office Building; Senator Richard G. Lugar (chairman of the subcommittee) presiding.

Present: Senators Lugar and Williams.

OPENING STATEMENT OF SENATOR LUGAR

Senator LUGAR. The subcommittee will come to order.

We will have a second day of hearings today on Senate bill 1160, the mass transit legislation as proposed by the administration and introduced on behalf of the administration by Senator Garn, the chairman of the full banking committee, and myself, chairman of this subcommittee. Our hearing last week dealt essentially with operating subsidies, capital subsidies, the general parameters of financial relationships and intergovernmental relationships, and that hearing I felt—I think all of us on the subcommittee felt that it was most productive, and we have been assimilating the testimony of witnesses.

Today we will be dealing principally with two issues, which are very important aspects, philosophically as well as substantively, of mass transit legislation, the 13(c) clause and section 504. We felt that these were of great importance and deserving of a special hearings so that witnesses on several sides of these issues might be heard and other testimony offered for the record.

It is my privilege to call, as our first witnesses today, a panel of Dan V. Maroney, Jr., international president, Amalgamated Transit Union, Dr. Ray Mundy, director of Public Transportation and Management Center, University of Tennessee at Knoxville, Tenn.; Clarence Pendelton, chairman of the board of the San Diego Transit Corp., Victor Sood, director of the Snohomish County Public Transportation Benefit Area in Lynwood, Washington. Would those witnesses please come forward?

Gentlemen, I will ask that you testify in the order, Mr. Maroney first, then Dr. Mundy, Mr. Pendelton, and Mr. Sood. And without objection, all of the testimony will be made a part of the record, as well as additional exhibits that you might have that would be helpful to the subcommittee and to all senators gaining a comprehension of these issues.

I will ask for the sake of making certain that a fair hearing is held, and yet that we manage to make it, given the votes that will

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be occurring on the Senate floor periodically throughout these hearings this afternoon, that you try to summarize within a 10-minute period your original testimony, and then submit to questions from the chair or other Senators that may join us.

At this point I would like to welcome each one of you, and call upon Mr. Maroney.

STATEMENT OF DAN V. MARONEY, JR., INTERNATIONAL PRESIDENT, AMALGAMATED TRANSIT UNION, ACCOMPANIED BY WILLIAM LINDNER, INTERNATIONAL PRESIDENT, TRANSPORT WORKERS UNION; EARLE PUTNAM, A.T.U. GENERAL COUNSEL; AND KENNETH MEIKLEJOHN, LEGISLATIVE REPRESENTATIVE OF THE AFL-CIO (RETIRED)

Mr. MARONEY. Thank you, Mr. Chairman.

My name is Dan Maroney and I am international president of the Amalgamated Transit Union, which represents in excess of 165,000 members employed in the transit and over-the-road bus industries in the United States and Canada. Most of these are employed as bus drivers, maintenance personnel, clerical, administrative employees, and in other jobs in these industries.

With me here today are William Lindner, International President of the Transport Workers Union, and A.T.U. General Counsel Earle Putnam. Also I wish to introduce Kenneth Meiklejohn, a retired legislative representative of the AFL-CIO who has been assisting us.

I have been authorized to state that the AFL-CIO and the TWU are in full support of the statement we are presenting here today. I also have a letter that I wish to have entered into the record, from the AFL-CIO.

Senator LUGAR. That will be entered into the record.

[The information follows:]

STATEMENT BY THE AFL-CIO PUBLIC EMPLOYEE DEPARTMENT

This is to present to the Committeee the recommendations of the AFL-CIO Public Employee Department (PED) regarding Section 13 of the Urban Mass Transit Act. We, PED, are 34 national unions of some two million public employees. The many financial difficulties faced by urban mass transit across the country are well known. Time magazine's recent cover story on this question has documented, in popular form, many of these problems.

The budget resolution of the Senate and House, as well as the Administration's recommendations, does not promise federal relief.

There is, however, one bright area in this whole subject: the good record of cooperative labor-managment relations achieved in mass transit under Section 13(c). Accordingly, we urge that this Section not be amended.

As you know, many states have no provision for collective bargaining for state and local public employees with their employer. The result is that, at least in those states, there is no orderly basis for the development of labor-managment relations. Accordingly, as public employees, as well as users of mass transit and as citizens, we urge that it would be a regression if Section 13(c) were to be amended. We ask that you consider seriously this expression of our conclusion.

We respectfully, but forcefully, disagree with the April 7, 1981, assertion of the Administration titled, "Additional Details on Budget Savings" on page 282, where that report alleges that:

"Federal subsidies and the Federal 'strings' attached to those subsidies tend to drive up operating costs * * *.

The undersirable side effects of Federal subsidies—lower productivity and unrealistically low fare levels—could only be dealt with by an inappropriate level of Federal involvement in local decisions about fares, wage rates, service levels and management practices. These decisions are better left for local decision makers."

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Experience suggests that a national policy for labor-management cooperation through collective bargaining as established in industries affecting interstate commerce since 1935, is far more conducive to labor-managment cooperation and productivity than a crazy quilted patchwork of wildly varying legal arrangments. Accordingly, Section 13(c) should be left undisturbed.

Mr. MARONEY. Mr. Chairman, I will not read the entire statement and I will do my best to be as brief as possible.

From the time when the Urban Mass Transportation Act was first passed, the labor movement, through the AFL–CIO has played an indispensible part in developing a nationwide mass transit program. You should know, Mr. Chairman, that we were a major factor in helping bring about the original enactment into law of the 1964 act.

Thereafter we helped to achieve constructive working relationships among the interested parties, the Federal Government, the Congress and the executive branch, State and local officials, local transit operators, and unions, for administration of the program and for improving and strengthening it over the years. Indeed, without the cooperation and assistance provided by the labor movement, it would be doubtful whether any viable urban mass transportation program would be before you for reauthorization and extension today.

We of transit labor share many of the goals of this administration, to reduce inflation, to improve the economy and make it more productive. But we certainly cannot agree with the directions this administration has chosen to take to achieve these ends in regard to the mass transportation program.

ABANDONMENT OF FEDERAL COMMITMENT

We are convinced that this bill does not serve the best long-term interests of mass transit in our Nation, and amounts to an abandonment of the Federal commitment to promote an expansion of these services and increased ridership.

The administration's notion that transportation services should be financed locally in the areas benefitting from those services means substantial increases in local taxes or passenger fares, or reductions or elimination of services. The ultimate impact will be to drop essential services or to impose additional economic burdens on the States and local governments and the transit users, who are primarily people without other means of transportation, such as the poor and the elderly. The predictable effect of these cuts in the Federal program will be to add to inflation and unemployment, because urban mass transportation at reasonable fares is the only available means of providing mobility to all citizens.

In the absence of any specific information concerning proposals on labor issues that may be made during the course of this committee's deliberations and markup of the bill, our testimony here can only provide some general background which may be useful in this committee's evaluation of these issues.

From labor's viewpoint, the essential function of the labor protection provisions of section 13(c) of the act is to preserve jobs, wages and benefits and collective bargaining rights that we have enjoyed for many years. To the extent such fair and equitable labor conditions impose costs on the recipients of Federal funds, we believe

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they are more than set off by the benefits received by the applicant. They are also fully justified by the public purposes served by the statutory protections.

In text, section 13(c) requires as a condition of Federal assistance, that fair and equitable arrangements be made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. These arrangements must include, but are not limited to, continuation of collective bargaining, the preservation of pension and other benefits, assurances of employment and a floor of protection for all adversely affected employees against job displacement or other worsening of employment equivalent to the benefits established under the Interstate Commerce Act for railroad employees in cases involving mergers, consolidations and the like.

Apart from the basic requirements set forth in the statute, the Congress made no effort to prescribe the complete and detailed arrangements necessary to insure the fair and equitable treatment of employees in each case. The legislative history shows that Congress intended the means for providing these protections to be worked out in advance of the Secretary's certification of a particular project through the local bargaining process.

At the time of the original act, the committee report stated that:

> Subject to the basic standards set forth in the bill, specific conditions for worker protection will normally be the product of local bargaining and negotiation.

The committees also stressed that the Secretary of Labor would retain overriding responsibility to develop guidelines and criteria:

> as to the types of provisions that may be considered as necessary to insure that worker interests are adequately protected in the different types of situations that may arise,

and to make the determinations required by law.

Thus, it is exclusively the role of the Secretary of Labor, and not that of the Urban Mass Transportation Administration or the Department of Transportation to insure that the intent of the Congress in regard to the labor provisions of the act is carried out.

The major labor relations impact of section 13(c) to date has been to assure continuation of collective bargaining rights of transit employees following public takeovers with Federal funds, of the hitherto privately operated transit industry.

The sponsor of the original administration bill in 1963, Senator Williams, recognized at the outset that the bill must include safeguards for collective bargaining and arbitration in the transit industry.

At the hearings before this committee, the situation in Dade County, Fla. was used to illustrate labor's concern that collective bargaining rights in the private transit industry would be abrogated in federally assisted public takeover situations by interposition of hostile State law precluding or limiting bargaining among state and local public transit employees. Congress, at that time, determined to avoid financing future Dade County situations by conditioning the receipt of the Federal assistance on the continuation of collective bargaining.

Former Senator Morse, whose amendment contained the language on collective bargaining now found in section 13(c), explained

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the relationship between the Federal requirement continuing collective bargaining rights, and contrary State law as follows:

> The state can continue its state policy if it wishes to; but in the judgment of the Senior Senator from Oregon, the state should not be allowed to receive federal funds with which to continue a policy that is in conflict with a sound federal policy.

Senator Tower's contrary amendment that all 13(c) arrangements be "consistent with the laws of the State in which the project or portion of the project is located" was rejected. Accordingly, the Secretary of Labor, in administering these provisions, has concluded that the right of continued collective bargaining guaranteed by the statute must be met, notwithstanding the existence of statutory impediments under State or local law, if the applicant is to qualify for Federal assistance.

A Federal district court has recently upheld a Department of Labor determination that the city of Macon, Ga. must provide for a restoration of collective bargaining rights lost in a public takeover in order for the city to qualify for Federal assistance. It is beyond question that in the absence of this section 13(c) requirement of continued collective bargaining, many of the employees represented by the ATU and TWU in the public sector transit industry would have no collective bargaining at all, or a lesser form which does not provide true equality at the bargaining table.

In our judgment, much of the hue and cry about the economic impact of 13(c) and its alleged unwarranted infringement upon the local collective bargaining process reduces upon analysis to a complaint that State and local public bodies should not be required by Federal law to honor the collective bargaining rights taken over from private employment. Those rights are now safeguarded by express statutory provision, by determination of the Secretary of Labor in particular cases, and by 13(c) agreements applicable to the great majority of transit systems in the United States.

It is unthinkable that such requirements, which have applied for almost 20 years in the history of this program, should be repealed or administratively reformed in the name of preventing alleged infringements in the very local collective bargaining process which the statute was designed to preserve.

Since the passage of the act in 1964, the Department of Labor had made in excess of 5,000 13(c) certifications applicable to capital, operating and demonstration grants, involving in excess of $17 billion in federal funding. In only a handful of cases has the Department been unable to make the required section 13(c) certification, and in most of these cases the applicants subsequently found ways and means of achieving compliance with the statutory protections, as determined by the Secretary, and thereupon received section 13(c) certification and funding of their grant applications.

A Department of Labor study published in May 1978 stated that only 4 out of 267 transit systems surveyed had reported direct cash payments to adversely affected workers under 13(c) arrangements amounting to $6,893. It is beyond question that the total claims liability paid by the industry since 1964 has been so small as to approach zero, compared to the many billions of dollars received by those systems in aid of their transit improvement programs.

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Many complaints against the Secretary of Labor's administration of the statute have centered on the evolution of section 13(c) requirements in regard to the Interstate Commerce Act, section 5(2)(f) protections. The primary function of these requirements is to see that all available jobs are filled first by employees from existing systems in the service area who may be affected by the project. It is only when such jobs are not available, as a result of the project, that the dismissal and displacement, retraining and relocation provisions become applicable.

Thus, the main thrust of these protections is to assure continued employment to career employees in circumstances where the applicants for Federal funds would otherwise be free to hire other workers, often under unilaterally determined wages, hours, and working conditions. The allowance provisions extending as long as 6 years under the so-called Amtrak conditions have almost never been paid by transit employers, and are not likely to be paid in the future, unless jobs are eliminated as a result of a Federal project through reorganization or automation or other changes.

In evaluating the appropriateness of these protections and the alleged costs related thereto, this committee should remember that these protections are of no direct cost to the Federal Government, unlike other employee protections in other industries. Under section 13(c), the cost of protections are borne by the industry assisted, and not by the Federal Government, although these costs, if any, are partially reimbursable from section 5 allocations. We see no reason now, despite adverse economic conditions and budget shortfalls, to anticipate additional employee protection costs from future projects.

In July 1975 the Secretary of Labor approved the use of a model national employee protection agreement which had been reached between union representatives of organized transit labor, including the ATU and the TWU, and the American Public Transit Association. It was agreed between these union and industry representatives that this model agreement detailing protective terms and conditions that would generally apply for section 5 operating assistance grants would be used by local transit systems and unions as a basis for section 13(c) certification.

Senator LUGAR. Mr. Maroney, could you summarize, maybe, in the next couple of minutes the remainder of your statement? It will all be made a part of the record.

Mr. MARONEY. I can summarize it a whole lot.

Senator LUGAR. All right.

Mr. MARONEY. As it is all in the record, I will just skip the pages that we have and say to you, Mr. Chairman, that as you well know, this is an industry that brought the benefits with them that we have. We're the only industry in existence that converted in total from the private sector into the public sector.

We asked only to preserve what we already had when we came here. In fact we have bargained away in our dealings with the Federal Government, with the industry, and with governments at all levels the rights that we already had for strikes. And in lieu of that, we accepted arbitration. And that has been the biggest cry. There has not been any documentation of 13(c) abuses. Time and time again we ourselves have asked for proof. And even in the last

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GAO report you've had, it clearly indicates that the Government also did not get documentation of any abuses of 13(c).

We would like to have an opportunity to protest in writing to testimony presented here today, Mr. Chairman, as this was not in the bill and we had no opportunity to know what was going to be presented here; and also to answer any questions that the committee might have. We would like to have that opportunity.

Senator LUGAR. The record will be kept open so that you might respond. This will certainly be a benefit in having the full view expressed.

Mr. MARONEY. I realize I've had to read rather fast. We would like to have gotten our entire testimony in, as much as possible, and I want to thank you, Mr. Chairman, and that concludes our remarks, and I will be happy to answer any questions that I might be able to answer.

Senator LUGAR. Thank you, Mr. Maroney, and we thank you for bringing your associates with you.

[Mr. Maroney's statement follows:]

STATEMENT OF DAN V. MARONEY, JR., INTERNATIONAL PRESIDENT, AMALGAMATED TRANSIT UNION, AFL-CIO

Mr. Chairman and members of the subcommittee, my name is Dan V. Maroney, Jr. I am International President of the Amalgamated Transit Union, which represents in excess of 165,000 members employed in the transit and over-the-road bus industries in the United States and Canada. Most of these are employed as bus drivers, maintenance personnel, clerical and administrative employees, and in other jobs in these industries. With me here today are William Lindner, International President of the Transport Workers Union and his Legislative Representative, Frank O'Connell, ATU General Counsel and Assistant Counsel, Earle Putnam and Alexander Cohn. I also wish to introduce Kenneth Meiklejohn, a retired legislative representative of the AFL-CIO, who is assisting us. I have been authorized to state that the AFL-CIO and the TWU are in full support of the statement we are presenting here today.

From the time when the Urban Mass Transportation Act was first passed, the labor movement, through the AFL-CIO, has played an indispensable part in developing a nationwide mass transportation program. You should know, Mr. Chairman, that we were a major factor in helping bring about the original enactment into law of the 1964 act. Thereafter we helped to achieve constructive working relationships among the interested parties—the Federal Government, the Congress and the executive branch, State and local officials, local transit operators, and unions—for administration of the program and for improving and strengthening it over the years. Indeed, without the cooperation and assistance provided by the labor movement, it would be doubtful whether any viable urban mass transportation program would be before you for reauthorization and extension today.

We of transit labor share many of the goals of this administration to reduce inflation, to improve the economy and make it more productive, but we certainly cannot agree with the directions this administration has chosen to take to achieve these ends in regard to the mass transportation program. We are convinced that this bill does not serve the best long-term interests of mass transit in our Nation and amounts to an abandonment of the Federal commitment to promote an expansion of these services and increased ridership. The administration's notion that transportation services should be financed locally in the areas benefiting from those services means substantial increases in local taxes or passenger fares, or reductions or elimination of services. The ultimate impact will be to drop essential services or to impose additional economic burdens on the States and local governments and transit users, who are primarily people without other means of transportation, such as the poor and elderly. The predictable effect of these cuts in the Federal program will be to add to inflation and unemployment, because urban mass transportation at reasonable fares is the only means of providing mobility to all citizens.

Mr. Chairman, a nation suffering from the growing burdens of world inflation and inadequate productivity in its own economy cannot afford to cut back on its financial commitments to mass transit. The present administration seems not to recog-

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nize the fundamental role of transit in making the economy more productive, and in conserving scarce energy and other resources.

The national need for improved urban mass transportation is growing and will continue to grow in the years ahead.

The Federal role should be to encourage the expansion and improvement of transit services and to adopt policies promoting the widest use of transit as an alternative to private transportation. Expanded transit investment is needed at all levels of government to combat petroleum and energy shortages, to reduce highway construction and maintenance costs, to fight air pollution, to help channel growth into high density corridors and zones, and to use scarce financial resources and materials economically and efficiently.

Transit demand will increase as a result of petroleum shortages and surging fuel and other energy costs. Increasing private automobile prices, and other impacts of inflation will also lead more and more people to rely on transit for mobility if such services continue to be available at reasonable cost. Transit ridership has already increased 25 percent over the last few years. The national goal should be to increase ridership again by at least 50 to 75 percent by 1990. This cannot be done by confining the Federal role to capital investment, and by leaving to State and local governments and transit users the entire burden of funding the costs of transit system operations.

Under this bill the administration has proposed eliminating Federal operating assistance for transit by 1985, and under the budget resolutions, this could occur even earlier. Small urban and rural operating aid would be eliminated in 1982.

Mr. Chairman, this tragic dismantling of a vital element of the Federal transit program ignores both the past and the future. This Federal operating subsidy was established because mass transit could not survive then—and it cannot survive now—solely from the fare box and from local tax revenues. Indeed, operating assistance came into the Federal program as a way of assuring continuation of necessary services. The section 5 program represents a conscious national effort to reduce the decline of transit services and to increase service levels and passenger trips, to maintain State and local financial support for transit, to keep fares low, and to improve the efficiency, effectiveness and productivity of transit operations.

The successes of this program as a necessary complement to capital funding have included the transformation of a dying, profit-motivated public utility enterprise into a tax-supported service oriented industry owned and operated by the general public. Thanks to the Federal initiative and leadership role, the downward ridership trend which had persisted since World War II was finally reversed, beginning with the oil crisis in 1973. Every succeeding year has brought steadily increasing patronage and service expansion consistent with national program goals as well as with locally determined needs.

The prospect under private enterprise in its declining years was always for ever-diminishing ridership from round after round of fare increases and service roductions. After years of experience with this downward spiral, which led to the public acquisition and funding of the transit industry, we would be foolish indeed to adopt Federal policies forcing that this cycle be repeated under public ownership. Yet that is already happening in a time of worldwide inflation and budget shortfalls beyond the control of both local transit management and labor. Federal operating funds are more needed than ever to retain and expand essential services. Transit fares have already risen by 18 percent in the last year alone. These increases and service cuts under public ownership have produced major losses in ridership, service cuts and layoffs, with only marginal increases in revenues. The phasing out of the operating assistance program altogether can only have further disastrous results, contrary to national transportation policy goals and objectives.

The notion of this administration that Federal operating assistance has led to inefficiencies at the local level is an undocumented misconception. General inflation and public demand for increased services which cannot pay for themselves from the fare box are the major contributors to increased operator costs. The fastest growing operating cost in the last decade has been the price of motor bus fuel, which as the APTA witness, Leonard Ronis, testified last week, has risen 1,000 percent on the Cleveland transit system in the last 10 years, from 11.4 cents per gallon to $1.14 per gallon today. Because fuel costs are rising far more quickly than general inflation rates, they are becoming an ever larger portion of transit system operating expenses.

There is no foundation whatsoever to the notion that the Federal operating assistance program is somehow responsible for the financial problems of the industry and is causing inflated labor costs and inefficient system management.

It proves nothing against the Federal program or local management that total payroll in this service industry constitutes as much as three-fourths of any system's

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total operating budget. In the last several years, wage settlements in the organized transit industry have not kept pace with surging inflation rates and the workers' real income has declined. Indeed, a recent OMB study concluded that "transit employees' salaries and their rate of increase are comparable to those of other public sector employees who work in cities of the same size." (Hearings before the House Appropriations Committee on the Department of Transportation and Related Agencies Appropriations for 1981 at p. 977) Thus, the common complaint of the moment that transit labor is overpaid is not borne out by the evidence produced by those who have looked into these matters and have been fair in their findings. Labor didn't create the problem in the Nation's transit budgets, inflation did.

I can tell you, Mr. Chairman, that no financial sacrifice is fair which is imposed solely upon labor. It has always been our position that our members are entitled to an equitable and a living wage and should be paid the going price for their services, just as the industry must pay the going price for material, fuel and power. This, of course, does not deny that ultimately the employees must depend for their jobs and for their wages upon the resources available to the transit system. If there is no money available, there will be a loss of service and jobs. The cutoff of Federal operating assistance will in turn mean funds are not available for essential maintenance, fuel and labor costs. The original goals of the section 5 operating assistance program to expand service, maintain fares and increase ridership will never be met by curtailment and elimination of Federal operating assistance and by transfer of the full costs of operations to the local community, whose taxing authority and financial resources are far more limited than those of the Federal Government.

CAPITAL PROGRAM

The administration is to be commended for its decision to continue the capital programs funded under section 3, 5, and 18 of the UMTA Act, although the proposed legislation provides for inadequate growth in the capital programs over the years covered by the bill. Our major concern, however, is the lack of balance in the program which will be created by channelling all funding into capital projects. This denies to the local areas the flexibility needed to gain maximum benefit from the Federal dollars. Federal assistance should be as diverse as the urban areas themselves and their funding needs. This is not to say that we favor a block grant approach to Federal transit funding, as proposed by the industry and city and county officials who have previously testified. To the contrary, we support the approaches used under section 5 of the act, which allocate money to the various States and localities for both capital and operating purposes based primarily upon locally determined needs under general program standards and requirements. In this connection, it appears to us appropriate that the allocation formulas be revised both to use the latest available census figures of 1980 and to include new allocation factors based on vehicle miles and passengers carried so as to insure that a larger proportion of the total funding will be channeled to metropolitan areas of greatest need. In brief, we believe any extended transit legislation should include an appropriate mix of Federal Aid, both capital and operating, permitting flexibility at the local level within broad Federal guidelines and incentives designed to promote the national goals of increased ridership. On the other hand, contrary to the proposed technical change in this bill, we believe every capital project should be funded at the 80 percent level in the interests of fairness in the administration of the program and certainty at the local level.

REGULATORY ISSUES

The administration in its testimony has indicated its belief that the cut in operating assistance funding can be made up in large part by removal of regulatory constraints which impose undue operating costs and burdens on the local transit industry. Foremost of those mentioned as burdensome are those attributed to section 405 and to section 13(c). It was suggested by Administrator Teele, I believe, that the section of this bill providing local option for transit of handicapped persons as an alternative to making the entire transit system accessible, could save the Nation as much as $4 billion in capital expenditures otherwise required to provide mainstream accessibility. We would agree that mobility must be provided by public transportation to all citizens, including the handicapped, and that if local option is to prevail, it must assure that locally developed programs provide such services to handicapped persons under criteria assuring reasonably comparable service. These requirements should also be made enforceable at law by handicapped persons. Assuring that the bill will be amended to provide such a standard, then it is far from clear whether or to what extent there will be cost reductions and savings to the local community in the provision of these services. The fact remains that

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alternate services are a duplication of existing services and that such redundancy necessarily creates additional capital and operating costs which may ultimately prove more expensive than the costs of adapting existing industry facilities and equipment to serve the handicapped. In any event, it is highly doubtful that the savings of local option will be significant unless, indeed, it is the intention of this committee and the Congress and this administration to deny to the handicapped community those services to which they are entitled as citizens.

LABOR ISSUES

Although this bill proposes no statutory change in the employee protection provisions of the Act, the testimony of the administration witnesses and others who have appeared here has suggested that regulatory changes are in order, if not statutory revision, to promote innovation and reduce labor costs. The overall message seems clear that the administration, APTA and others want to reform the administration of section 13(c) in favor of management and transportation innovators.

In the absence of any specific information concerning proposals that may be made during the course of this committee's deliberations and markup of the bill, our testimony here can only provide some general background which may be useful in this committee's evaluation of these issues.

From labor's viewpoint, the essential function of the labor protective provisions of section 13(c) of the act is to preserve jobs, wages and benefits, and collective bargaining rights. To the extent such fair and equitable labor conditions impose costs on the recipients of Federal funds, we believe they are more than set off by the benefits received by the Applicant. They are also fully justified by the public purposes served by the statutory protections.

In text, section 13(c) requires that as a condition of Federal assistance fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. These arrangements must include, but are not limited to, continuation of collective bargaining, the preservation of pension and other benefits, assurances of employment, and a floor of protection for all adversely affected employees against job displacement or other worsening of employment, equivalent to the benefits established under the Interstate Commerce Act for railroad employees in cases involving mergers, consolidations and the like.

Apart from the basic requirements set forth in the statute, the Congress made no effort to prescribe the complete and detailed arrangements necessary to insure the fair and equitable treatment of employees in each case. The legislative history shows that Congress intended the means for providing these protections to be worked out in advance of the Secretary's certification of a particular project through the local bargaining process. At the time of the original act, the committee reports stated that "subject to the basic standards set forth in the bill, specific conditions for worker protection will normally be the product of local bargaining and negotiation." (2 U.S Cong. and Adm. News, 1964, H. Rep. 204, p. 2584-5) The committees also stressed that the Secretary of Labor would retain overriding responsibility to develop guidelines and criteria "as to the types of provisions that may be considered as necessary to insure that worker interests are adequately protected in the different types of situations that may arise," and to make the determinations required by law. Thus, it is exclusively the role of the Secretary of Labor and not that of the Urban Mass Transportation Administration or the Department of Transportation, to insure that the intent of the Congress in regard to the labor provisions of the act is carried out. As Professor Alan Altshuler once stated in a paper delivered to the Williamsburg Paratransit Conference in 1975, "Responsibility for determining that the provisions of section 13(c) have been satisfied rests with the Secretary of Labor, not the Secretary of Trnasportation. The intent of Congress in making this assignment was clearly to insure that labor relations, rather than transportation considerations, would predominate in the resolution of difficult cases."

CONTINUATION OF COLLECTIVE BARGAINING RIGHTS

The major labor relations impact of section 13(c) to date has been to assure continuation of collective bargaining rights of transit employees following public takeovers with Federal funds of the hitherto privately operated transit industry.

The sponsor of the original administration bill in 1963, Senator Williams, recognized at the outset that the bill must include safeguards for collective bargaining and arbitration in the transit industry. At the hearings before this committee, the situation in Dade County, Florida, was used to illustrate labor's concern that collective bargaining rights in the private transit industry would be abrogated in federal-

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ly assisted public takeover situations, by interposition of hostile State law, precluding or limiting bargaining among State and local public transit employees. Congress at that time determined to avoid financing future Dade County situations by conditioning the receipt of Federal assistance on the "continuation of collective bargaining." Former Senator Morse, whose amendment contained the language on collective bargaining now found in section 13(c), explained the realtionship between the Federal requirement, continuing collective bargaining rights, and contrary State law as follows:

"The State can continue its State policy if it wishes to; but in the judgment of the Senior Senator from Oregon, the State should not be allowed to receive Federal funds with which to continue a policy that is in conflict with a sound Federal policy." (109 Cong. Rec. 5672, 5671, 5675)

Senator Tower's contrary statement that all 13(c) arrangements be "consistent with the laws of the State in which the project or portion of the project is located" was rejected. (109 Cong. Rec. 5422) Accordingly, the Secretary of Labor, in administering these provisions, has concluded that the right of continued collective bargaining guaranteed by the statute must be met, notwithstanding the existence of statutory impediments under State or local law, if the applicant is to qualify for Federal assistance. A Federal district court has recently upheld a Department of Labor determination that the city of Macon, Georgia, must provide for a restoration of collective bargaining rights lost in a public takeover in order for the city to qualify for Federal assistance. (*City of Macon* v. *Marshall,* 439 F.Supp. 1209, M.D.GA 1978)

It is beyond question that in the absence of this section 13(c) requirement of continued collective bargaining, many of the employees represented by the ATU and TWU in the public sector transit industry would have no collective bargaining at all or a lesser form that does not provide true equality at the bargaining table. In our judgment, much of the hue and cry about the economic impact of section 13(c) and its unwarranted infringement upon the local collective bargaining process reduces upon analysis to a complaint that State and local public bodies should not be required by Federal law to honor the collective bargaining rights taken over from private employment. Those rights are now safeguarded by express statutory provision by determinations of the Secretary of Labor in particular cases and by section 13(c) agreements applicable to the great majority of transit systems in the United States. It is unthinkable that such requirements, which have applied for almost 20 years in the history of this program, should be repealed or administratively "reformed" in the alleged name of preventing alleged infringement in the very local collective bargaining process which the statute was designed to preserve.

ADMINISTRATION BY THE DEPARTMENT OF LABOR

Since the passage of the act in 1964, the Department of Labor has made in excess of 5,000 13(c) certifications applicable to capital, operating and demonstration grants, involving in excess of $17 billion in Federal funding. In only a handful of cases has the Department been unable to make the required section 13(c) certification, and in most of these cases, the applicants subsequently found ways and means of achieving compliance with the statutory protections as determined by the Secretary and thereupon received section 13(c) certification and funding of their grant application. A Department of Labor study published in May 1978 entitled, "The Economic Cost Impact of the Labor Protection Provision of Section 13(c)," stated that only 4 out of 267 transit systems had reported making direct cash payments to adversely affected workers under 13(c) arrangements amounting to $6,893.00, in connection with 505 Federal grants funded in the period from 1964 through 1974, totaling $4.4 billion. No information of total claims costs is available for the subsequent funding period from official sources, but union records show no increase in claims activity or collections for the subsequent period involving grants totaling in excess of $11 billion. It is beyond question that the total claims liability paid by the industry since 1964 has been so small as to approach zero, compared to the many billions of dollars of Federal funds received by those systems in aid of their transit improvement programs.

PROTECTIONS AGAINST LOSS OF EMPLOYMENT OR EARNINGS

Many complaints against the Secretary of Labor's administration of the statute have centered on the evolution of section 13(c) requirements in regard to the Interstate Commerce Act section 5(2)(f) protections. The primary function of these requirements is to see that all available jobs are filled first by employees from existing systems in the service area who may be affected by the project. It is only when such jobs are not available as a result of the project, that the dismissal and displacement, retraining and relocation provisions become applicable. Thus, the

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main thrust of these protections is to assure continued employment to career employees in circumstances where the applicants for Federal funds would otherwise be free to hire other workers, often under unilaterally determined wages, hours and working conditions. The allowance provisions, extending as long as six years under the so-called Amtrak conditions, have almost never been paid by transit employers and are not likely to be paid in the future unless jobs are eliminated as a result of a Federal project through reorganization, automation or other changes.

In evaluating the appropriateness of these protections and the alleged costs related thereto, this committee should remember that these protections are of no direct cost to the Federal Government, unlike other employee protections in other industries. Under section 13(c), the costs of protection are borne by the industry assisted, and not by the Federal Government, although these costs, if any, are partially reimbursable from section 5 allocations. We see no reason now, despite adverse economic conditions and budget shortfalls, to anticipate additional employee protection costs from future projects.

THE NATIONAL OR MODEL SECTION 13(C) AGREEMENT

In July of 1975, the Secretary of Labor approved the use of a model national employee protective agreement which had been reached between union representatives of organized transit labor, including the ATU and TWU, and the American Public Transit Association. It was agreed between these union and industry representatives that this model agreement, detailing protective terms and conditions that would generally apply for operating assistance grants, would be used by local transit systems and unions as a basis for section 13(c) certification. This agreement is today in use on most transit systems and has greatly expedited DOL approval of grant applications for operating subsidies. It appears from a recent GAO report to the Congress, issued February 26, 1981, that the processing of such grants covered by this agreement has been slowed by typing delays and other administrative problems within the Department of Labor. Otherwise, we believe use of the model agreement has well served the policies of the program and the interests of the parties. The processing of section 5 operating grants under section 13(c) is today a routine "piggyback" procedure which should occasion no undue paperwork or administrative delay.

DEPARTMENT OF LABOR SECTION 13(C) REGULATIONS: THE NEGATIVE DECLARATION CONCEPT

The negative declaration approach referred to by APTA in its testimony before this committee was first broached by the Department of Transportation in the context of discussions mandated by the White House between DOT and DOL on administrative simplication of section 13(c) procedures in 1976. The two departments ultimately reached agreement on "guidelines" for the processing of 13(c) certifications, including the setting of time limits by the Department of Labor for the negotiation of 13(c) agreements and the carrying over of existing 13(c) arrangements in certain cases of amended projects or ongoing grants. These guidelines, which appear at 29 CFR Chapter II, Part 215; FR Vol. 43 No. 63, March 31, 1978, specifically reject the use of the negative declaration as contrary to the statute and sound administrative policy. The statute and legislative history make plain that the Congress was committed to providing mass transit employees the protections of section 13(c) through a process of local negotiations and secretarial certification of arrangements to be specified in the grant contract. Use of the negative declaration procedure would shift to the individual employee the burden of proof to rebut the applicant's "negative declaration" of adverse impact in order to qualify for the statutory protections. This would be an impossible burden for any employee to demonstrate in advance of a project. Consequently, the statutory mandate of the act to provide fair and equitable protections as a condition of the grant could not be fulfilled, because many worker rights and interests could not be adequately protected after the adverse impact actually occurred. The statutory guarantees would then be meaningless or impossible of implementation.

PARATRANSIT

The ATU has long been on public record in support of the Urban Mass Transportation Administration's efforts to introduce paratransit concepts and to promote new forms of urban mass transportation as a useful part of the total transportation network. We have not opposed the funding of such paratransit services as shared-ride taxis, van pools and car pools, subscription services and user side subsidies, provided only that the rights and interests of our members under section 13(c) are properly protected before these services are operated. As we have stated, we look

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with particular favor upon any form of paratransit which promises to improve the quality and reach of our traditional transit systems and services. We believe these conventional line-haul systems providing services on a regularly scheduled basis over fixed routes still are, and will continue to be, the heart of any effective regional system of urban mass trnasportation. As a matter of transportation policy, it is important that paratransit modes fill their proper role so that they do not detract from the performance of this central system. Many hard issues of policy are, of course, presented by the emergence of paratransit elements in a total transportation system.

From the viewpoint of organized labor, the introduction of each of these paratransit services does give rise to concern that their utlimate and intended effect may be to destroy conventional transit jobs and to undercut the transit worker's wage levels by substituting an unpaid or low wage, casual or part time non-union labor force for the better paid, career oriented professional transit worker. In our judgement, the working out of many of these concerns is properly a matter to be addressed under section 13(c) by the Secretary of Labor in the exercise of his jurisdictional mandate to provide guidelines and criteria to govern in the many situations that may arise. We believe that some mechanism must be found which will assure that shared ride taxi services and other group riding activities, such as special services to the elderly and handicapped, not be used as a device to destroy the transit worker's job, to depress his compensation levels, or to worsen his working conditions. Federal funds and grant conditions should not be offered on a basis which would demand as a condition of their receipt that there be changes in existing collective bargaining agreements and past practices applicable to the bargaining unit. Likewise, where Federal grant funds will go to the most efficient service provider under competitive bidding procedures, the bidding process should not be used as a device to force lower transit wage rates.

In sum, although there are many issues under section 13(c) as it applies to the paratransit mode, still to be resolved and determined, they are best left to individual case handling under proper guidelines and criteria developed by the Department of Labor. Congressional action is not needed and, in our view, would be detrimental to the ongoing administrative process.

Assertions made before this committee and elsewhere, that the labor protections of section 13(c) constitute an impediment to innovation and an unwarranted cost to transit management and local governments have not been documented because they are unfounded. As stated in the recent GAO report to the Congress:

"Section 13(c) could potentially be used by labor unions to block transit systems from implementing cost saving measures or substituting more cost effective alternatives to conventional bus or rail service. During our review, we asked transit officials if this is happening. Some officials indicated that 13(c) was used to block their efforts to improve transit operations, while others indicated that 13(c) was not a problem. Those officials who indicated that 13(c) was a problem, however, were not able to provide us with documentation to support their allegations."

Accordingly, we urge this committee to retain unchanged and intact these long-standing labor provisions, which provide minimum guarantees to individual workers that neither their jobs nor their rights to collective bargaining and arbitration will be affected by Federal funding under the transit program. The section 13(c) requirements and procedural arrangements have been in place for almost 20 years and they are working effectively. Functional improvements are, no doubt, attainable without undue tampering with the basic process. Section 13(c) arrangements are already in place for over $17 billion in Federal grants. To remove these protections or to seek their emasculation by so-called administrative deregulation would be very disruptive both to the program and to the industry. Collective bargaining among public employees and employers and section 13(c) bargaining under the auspices of the Department of Labor both work well. Nothing will be gained by interference with this process in the context of this committee's deliberations on the bill presently before you.

Thank you, Mr. Chairman, that concludes my prepared remarks. I would be pleased to respond to any questions you or the other members may have.

Senator LUGAR. And now, Dr. Mundy?

STATEMENT OF RAY MUNDY, CODIRECTOR, PUBLIC TRANSPORTATION POLICY AND MANAGEMENT, UNIVERSITY OF TENNESSEE

Dr. MUNDY. Mr. Chairman, members of the subcommittee, my name is Ray Mundy and I am codirector of a public transportation

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management and policy program at the University of Tennessee. The program in research is about a decade old, and it has been my major area of endeavor for the past 10 years.

As I present this testimony I would like to simply introduce several comments about some observations we've made concerning 13(c) and its relationship to labor and management negotiations and local municipal Governments. I would like to begin by saying I am wholeheartedly in support of the right of organized labor to collectively bargain for better wages and better working conditions in a free, competitive environment. And I think it is a sincere desire for a free, competitive, unencumbered bargaining arrangement that I am here today to make this testimony.

I guess the most damaging statement I could make is that in our own observations over a decade of 13(c) agreements and the problems and negotiations that local communities have had, that 13(c) really has been a foreign intrusion, a very Federal foreign intrusion into a very local negotiation between transit management and labor. And in my own opinion, and it is simply my own opinion, there is absolutely no reason to continue this invasion of a local community's right to collectively bargain with its labor.

The 13(c) provision and resulting master agreement that has been signed, I would go even further to suggest is a major reason today that communities like Chicago, Boston and many others are teetering on the brink of financial disaster with respect to being unable to pay for their local mass transit systems, and really don't know where they are going to get the money on a month-to-month basis.

I think unfortunately, and as we have looked at some of the issues associated with 13(c), that it is not just a labor paid issue. It is not simply the labor wages that have been collectively bargained for that have been the most debilitating or serious injury that local communities have suffered as a result of the 13(c) provisions. Far more important and I think far more damaging to those local communities have been the restrictive labor work rules and the resulting transit monopoly for one set of labor that has been promulgated through the Urban Mass Transportation Act and the resulting 13(c).

ANTIQUATED WORK RULES

Many communities today are reassessing just what benefits they have received from the so-called free Federal dollars to help support their local mass transportation systems. We, in essence, are trying to manage our mass transportation systems with a very antiquated work rules, perhaps some of them from the 19th century, with very early 20th century technology, and that is why financially we find it impossible to bring those mass transportation systems into the 21st century.

We have a tremendous problem of trying to make a system which was designed and built for communities in the early 20th century; that is, travel patterns and movements of people, that no longer fit. We no longer travel to the same destinations, we no longer make the same kinds of movements within, around and about our urban areas. So in order to do that, we must change our mass transportation systems. We must reorient them. We must redevelop them.

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To say to a local community you have to agree to a 13(c) provisions with its entailed work rules and entailed routes and schedules that have been bargained for in the past or you cannot receive Federal money, means that we no longer permit communities to experiment, to innovate, to try and do things with the utilization of Federal money. In essence, if they want to change the mass transportation systems, they are going to have to forgo Federal assistance.

I think never before has it been more appropriate for local communities to start asking the question which only before was somewhat said tongue in cheek, gee, the only problem with Federal assistance as it applies to mass transit is we may not be able to afford it.

The cost of such settlements has protected labor to the point that as local communities are now faced perhaps in the future with paying for their local transit systems, they will have a take-it-or-leave-it issue, and many of them, medium sized cities where many people need public transportation services, will have to go without it or have to go without Federal assistance completely.

SOCIAL COST OF LABOR

Let me suggest what I mean by giving you one instance as we take a look at some of the social cost of labor as we are currently doing in the Conrail situation in the country. We are attempting to separate, or at least the administration is attempting to separate, the social cost of labor in the Conrail situation from the actual cost of labor so that the Government-run freight railroad system in the northeast can be broken up and be palatable to the private sector.

Only by removing those social costs can we even sell off some of that service to the private sector. Those social costs may actually cost the Government well into the billions of dollars, but that $1 billion one-time payment is far more effective than the annual subsidy year after year and going nowhere, trying to remove those social costs and make that labor part of a productive taxpaying entity.

Private enterprise is the only way to change in a positive direction. The same labor clauses the same productive agreements that are presently in Conrail are also present in Amtrak, and I attest we're going to be doing the same thing in future years for some of the social costs in the labor production clauses in the Amtrak agreements.

Finally, there is our urban mass transportation acts, there are 13(c) clauses, and they are actually the same. We have not yet had to pay for those clauses, but we will probably some time in the future.

Just as we are here today, I can almost predict with a certainty that local communities will be here in the future saying to Congress, saying to you all, that you are the ones that asked us to put a 13(c) agreement in. We have now had to change our labor, change the way which we provide mass transportation, help us pay for those collective bargaining agreements that you said we had to sign.

Let me add one other instance and perhaps an ultimate irony of 13(c) is its application to almost anyone that comes close to provid-

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ing some form of mass transportation. We have extended its coverage far beyond what it was originally intended to, I think, by Congress.

Now, workers that are in rural areas, perhaps driving a van, perhaps paratransit drivers driving a taxicab, because they are providing these services with the assistance of Federal aid under some sort of contract provision, they are also covered by 13(c). We also require that under contract they competitively bid. In the next competitive bid if someone else wins the contract, are we to pay displacement charges to those employees of the first firm because they are covered by 13(c)?

Logic and common sense would say that is an absurd use of Federal funds, but yet as the process is now being worked out, we very well could be in the near future.

I guess one would have to suggest that I have made some rather damaging comments about 13(c) and its effects. I would like to suggest that for the record I have tried to compile some research over the years that we have collected in data and in comments by transit management on just exactly how 13(c) results in inefficient work rules, how it affects the labor wage rates, and how it effects the institutional relationship of bargaining between the local labor and transit management in municipalities at the local level.

Time, and I think much of the discussion today doesn't permit me to go into those, but I have summarized those within the paper. I would just like to point out that there are many instances in which we do pay transit labor for not working. Through no fault of their own, I'm sure many of them would rather work these hours, but we, many times, pay them for doing nothing.

There are many practices that have evolved under the 13(c), which mean we are doing and providing mass transportation systems very inefficiently, that the cost has been driven up to where many local communities simply cannot and will not afford it.

Institutionally, and we have gone into those in the paper, and I think there is no doubt in looking at the collective bargaining procedure who has the balance of power, transit labor has an inordinate amount of power when it sits down with the local community bargain collectively when it has 13(c) on its side, it has an enormous amount of power without 13(c) simply because of the nature of collective bargaining in the public sphere.

I guess the final comment, and I had to go back and do some original research to take a look at what had happened in the last 5 years with transit wage rates, after section V had been fully implemented, and I quoted in the paper a California study, and I would like to simply read from that quote.

In essence that quote that was done by the California Department of Transportation was a recent study in which the State was trying to determine whether or it could afford future collective bargaining agreements. In their study they documented the fact that labor wage rates, within the transit industry, were increasing at a rate faster than the consumer price index. As matter of fact, the divergence between the rate of transit labor and that of the consumer price index was growing under section V and they simply could not afford transit labor in the future. And some others today will giving, I think, testimony to that effect.

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I guess I would end by saying, Mr. Chairman, I have provided some instances in this paper. I'm not really as pessimistic as I sound in this presentation. I'm somewhat optimistic. I think that we have only forestalled the ultimate changes we're going to have to make in the provision of public transportation if we're going to make them serve our communities in the next century.

I thank you for this opportunity and I will be happy to answer any questions.

Senator LUGAR. Thank you, Dr. Mundy.

[The complete statement follows.]

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STATEMENT OF

RAY A. MUNDY, PH.D.
CO-DIRECTOR PUBLIC TRANSPORTATION
POLICY & MANAGEMENT PROGRAM
UNIVERSITY OF TENNESSEE
KNOXVILLE, TENN.

INTRODUCTION

I should like to point out that nothing contained within the following testimony should be construed to suggest I, in any way, do not wholeheartedly support organized labor and their right to collectively bargain for better wages and working conditions in a free competitive environment. Rather, it is in the interests of this free and unencumbered bargaining between management and labor that I am offering the following testimony.

The labor protection clause, section 13c, of the Urban Mass Transportation Act of 1964 as revised is a foreign intrusion into the local negotiations between transit management and labor. There is absolutely no reason for the continued invasion of a local communities' relationship with its employees. This labor protection clause, along with the resulting "Master Agreement" worked out by the American Public Transit Association, the Amalgamated Transit Union and The Transport Workers Union of America has been a major reason our nations' mass transportation systems are failing. Testimony by myself and others will demonstrate that this clause has financially benefitted the "protected labor" of transit, essentially a bankrupt industry, for beyond the capacity of local communities to pay for such protection. Unfortunately and ironically, the huge financial gains extracted from municipal and suburban budgets, far above the consumer price index since the advent of Section 5, operating assistance, are not the total damages suffered on the unsuspecting community that thinks they are getting "free" federal dollars. Far more damaging are the restrictive work rules and federal government transit monopoly

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status shackled to the receiving community when they sign the "Master Agreement" in fulfillment of their UMTA 13c requirement. These antiquitated work rules and transit monopoly are the major reasons we are utilizing 19th century operating scenarios, with early twentith century technology as we teeter near financial collapse into the twenty-first century with our mass transit systems. Our cities and population movements no longer fit the needs for which our mass transit systems were designed and built. Yet through the backing of the Federal government and section 13c we say to them you must continue to run your transportation systems the same way or we'll shut off the flow of assistance and take back all the equipment we purchased under assistance agreements. Never before has the often heard local complaint about federal aid been more true — "the only problem with Federal assistance is that you may not be able to afford it." Needed are transportation systems designed for our late twentieth century travel patterns. Immobilized by restrictive labor clauses through section 13c, communities cannot experiment, innovate and successfully modify their transit systems to present day needs.

Currently we are preparing to separate the "social" cost of the Conrail protective labor agreements from the "operating" costs of labor so that at least some part of the government run railroad will be palatible to privately operated railroads. There "social" labor costs may eventually run into the billions of dollars but these "one time" payments are worth while to make the resulting operation financially solvent in the tax paying private sector. Amtrack protective labor settlements will quickly follow as we discontinue our annual support of those segments of our government run passenger train system that few if any passengers

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patronize. The language of the UMTA 13c clause is exactly the same as that used in the Conrail and Amtrack labor protective agreements so it can be predicted with some certainty that local communities will some day in the not-too-distant future be here in Washington asking to be relieved of their labor protective burdens also. Thus, we should take the first steps today to eliminate any further damages caused by such federal intrusions into local bargaining agreements.

The ultimate irrony of section "13c" of the UMT act is its extension to all quasi-mass transportation employees who may be "touched" by Department of Transportations' Federal funds administered by UMTA. Because Section "13c" is interpreted to cover all mass transportation employees "within the projects' affected serivce area" new public transportation forms such as paratransit and rural transit providers are forced to sign a "13c" agreement. In some cases there may be van operators in rural areas (under section 18 of the act) or taxie firms in rural or urban areas providing services to the alderly or handicapped unable to use traditional transit. These services are performed under contract to the local area and usually for a fixed time period of one year. What happens if a competitive peratransit private operator successfully wins the next years' bid to provide service (competitive bidding on all contracts totalling more than $10,000 is another UMTA regulation)? Is the "13c" protective labor agreement signed with the first firms employees going to compensate the drivers because they were "displaced" by the 2nd year successful bidder? Under present guidelines it very well could and probably would. This is an absurd use of Federal funds but we may very well see it in the near future. Clearly, no one at this

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time has any idea what the ultimate total costs of such protective labor agreements is going to be.

Furthermore, it is a sad commentary and perhaps surprising to suggest that the massive amounts of Federal, State, and local aid given to our ailing transit systems has done little to improve their overall mobility. In fact, the combined annual subsidy of between 6 and 7 billion dollars may have made matters worse by raising the general level of public expectations of transit for beyond the systems' ability to deliver. It is interesting to note that in 1980 U.S. mass transit carrier a significantly lower percentage of the total trips taken in urbanized areas, especially peak time commuter trips, than it did in 1964 when the first trickle of Federal funds began.

In order to substantiate the above comments with more concrete details, I have extracted portions of a "Survey of Transit Issues" paper presented at the 1976 annual meeting of the Transportation Research Board.* This paper was developed from a survey of transit general managers concerning potential labor problems and costs in the transit industry. The mailed questionnaire was sent to 40 general managers and had a 50 percent response rate. In addition, the authors have discussed transit labor issues with many transit management personnel.

TRANSIT INDUSTRY STRUCTURE AND THE POSITION OF LABOR UNIONS

During recent years, transit ownership in many cities has shifted from private, regulated companies to public ownership. However, the concept of regulated, monopolistic transit ownership prevails today for

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*The Survey and resulting paper was coauthored by Mr. Keith Thelen of the Knoxville Metro Political Planning Commission.

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purely historical reasons. In 1888, electric streetcars were introduced and with them an economic advantage over other transit systems. Centralized power stations provided electricity over a city-wide grid system much more economically than individual lines or regional networks which had existed up to that time.[1] Consequently, many individual suppliers were combined into a single firm.

After the turn of the century, the jitney (often a private automobile for hire) operated along streetcar lines but was free to diverge from these routes and had a competitive advantage for trips under about 2 1/2 miles. The drivers were often part-time operators and many drove only during the peak hours. In the face of this competition, electric streetcar companies lobbied for, and received, exclusive franchises for their operations. This concession by city governments effectively eliminated the use of demand responsive jitneys. The advent of gasoline powered motorbuses provided an opportunity for widespreed competition in transit operations; however, as buses became more economically attractive, there was a "... decision to forego the alternative of a competitive bus industry. The conversion to bus was done by the transit monopolies, which continued to run the buses over the old linear routes."[1]

The position of labor unions is directly tied to the structure of the transit industry. Jitneys were a casual, part-time business for many owner-operators and these operators were impossible to organize. Likewise, a competitive bus industry which included many different companies would also have made organization of the labor force more difficult. On the other hand, monopolistic transit companies are fertile ground for labor unions. When a large, centralized labor force exists

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rather than many different companies, the workers can be organized with less difficulty. Furthermore, there is no alternative supplier when service is interrupted by a strike. This also strengthens the bargaining position of the union.

The strong position of labor unions in transit due to industry structure was strengthened further by the Urban Mass Transportation Act of 1964. This Act explicitly protects the interests and position of labor in the transit industry as a condition of Urban Mass Transportation (UMTA) funding. The spirit of the law can be best characterized by the following paragraph from the Act:

> "All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this agreement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued:..."[2]

Two other provisions which protect the status quo position of labor in municipal transit companies are:

> (a) "Whenever an employee...is placed in a worse position with respect to compensation as a result of the Project he shall be considered a 'displaced employee,' and shall be paid a monthly displacement allowance'...during the protective period following the date on which he is first 'displaced ...adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for."
>
> (b) "Whenever any employee is laid off or otherwise deprived of employment as a result of the Project,...he shall be considered a 'dismissed employee' and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph..."

Employee's Length of Service

Prior to Adverse Effect	Period of Protection
1 day to 6 years	Equivalent period
6 years or more	6 years

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Ironically, if a transit company develops a more economical method of meeting demands for public transit and is using UMTA funds, it must continue to pay any employees which might be laid off for up to six years after the new method is implemented. For example, Knoxville, Tennessee, has an UMTA funded demonstration project which involves the use of vans operated by private individuals to serve commuters. If, at some time in the future, these vans were utilized to serve evening transit patrons, and the number of bus operators were reduced as a result, it would still be necessary to pay those bus operators for up to six years after implementation of the project. Thus, innovation and/or cost-cutting measures are discouraged since the budgetary gains from such measures could not be realized until six years after the change.

The federal government, while professing to be promoting efficient mass transit operations, appears to be more concerned with protecting the security of labor unions. In fact, it could be argued that preservation of employee "rights" clearly has precedence over promotion of efficient public transit operations. In this climate, labor virtually has a free hand in its contract demands.

INSTITUTIONAL CHARACTERISTICS OF TRANSIT LABOR-MANAGEMENT RELATIONS

Monopolistic transit operations, when combined with federally insured protection of labor, produced four unique situations peculiar to the transit industry. First, consider the counterpart of the transit negotiating climate—namely the organizational structure of private industry and its relationship to contract negotiations. Private organizations usually have a well-defined hierarchy of functions and positions for the employees who are responsible for contract bargaining. Specific

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interests are represented when bargaining with the union, i.e., profitability of the enterprise. If wages and benefits increase or working conditions change to lower productivity, the industry will experience the consequences directly. Therefore, in a structured hierarchy of power, designated individuals are responsible for protecting the interests of a specific objective--firm profitability. These individuals are held accountable for achieving this objective.

The organizational structure, funding structure, and the influence of political pressures make the transit labor-management climate much different. The sole function and purpose of labor union negotiators is to obtain favorable settlements for their workers. As one survey respondent stated, "Management opponents in the Union have only one responsibility and that is to get higher wages and more benefits for the members and these men are specialists in their field with considerable expertise." Many months are spent by union representatives in preparation for the bargaining process. Union negotiators have experience in the area, are thoroughly acquainted with the bargaining process and participate in such talks as a matter of routine. They also are aware of contract terms in other parts of the country and will use these terms as a basis for their demands. In contrast, the typical transit management negotiating team lacks experience, information, and specialized negotiations. In fact, this is a small and relatively infrequent part of management's duties. Their duties regularly include grant applications, equipment management, and personnel management, as well as the contract negotiating process. This, the transit management is often as a major disadvantage,

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when compared with labor negotiators, to handle the contract bargaining process.

Whatever the deficiencies of using transit management personnel in the bargaining process, it may be considerably better than situations where no clearly defined party is responsible for the bargaining process. When the director of the transit authority, the mayor, and city lawyers (or some combination thereof) are responsible for representing the city, the ultimate responsibility for a settlement favorable to the city is not easily assigned to any one person or group. These individuals do not determine operating subsidies and they may not have full control over the levels of service provided. The transit board or city council may determine operating subsidies and levels of service. However, these decisions are made within the constraints of UMTA funding and political acceptability. In addition, the very structure of a board or council is that of a representative body, not that of executive decision-making type. Consequently, authority and decision-making are diffused rather than centralized.

In addition, labor negotiations are likely to occur only once every few years and are small part of the city representative's yearly duties. Where the negotiator who represents labor is a seasoned professional, the city representative is not likely to have experience, expertise, knowledge, nor the degree of determination to obtain as favorable a settlement as his counterpart.

Labor negotiations within the transit industry differ from labor negotiations in the private sector in a second important way. In transit labor negotiations, there are no clearly defined interests in terms of

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whose money is being spent when wages increase or productivity decreases. Since UMTA provides operating subsidies, any increase in costs is not borne fully by the municipal area. For example, if UMTA is providing 50 percent of the operating subsidy, a $1.00 increase in wages is a $0.50 increase as far as the municipality is concerned. In some cases, state agencies provide matching funds to local areas, reducing the local share even more. Therefore, the municipality is not required to fully absorb the consequences of its negotiated settlement.

Thirdly, there is a fundamental difference in attitudes between labor negotiations which are funded by UMTA and those which would occur if the operation were non-subsidized and privately owned. If transit operations were dependent solely on the farebox for their financial support, the union would need to consider the economic viability of the firm in its negotiations. After all, the existence of the union is dependent on the existence of the organization. If the firm has only limited profitability, one would expect the union to adjust its demands accordingly. However, this is not the case when a firm is subsidized. The existence of transit operations is assured by UMTA funding and municipal subsidies. The operation is "profitable" in the sense that revenues are (apparently) not limited. The labor union is not jeopardizing its existence by whatever demands it makes.

Finally, there are generally strong political pressures placed on public officials to negotiate a settlement in lieu of a strike. Transit, being a monopoly and a public service, is expected to operate without interruption. Many individuals, particularly those with no alternative, are dependent on transit for their economic existence. The trips to

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work and grocery shopping must be made or transit dependent persons will experience severe economic consequences. Given the monopolistic structure of transit operations, there is no economical alternative transit supplier (except taxicabs at somewhat higher cost) to absorb the new market. Transit operations are highly visible and public cries for resumption of service will quickly arise under strike conditions. These circumstances differ considerably from those in private industry. Curtailment of production usually means the consumer must simply purchase a substitute or postpone the purchase. Private industry labor disputes are usually confined to the firm versus the union. They can often settle their differences without strong and immediate pressure being applied to either party by citizens or elected officials.

Thus, due to organizational structure, funding structures, and the political process, transit unions are far better equipped to dictate terms of a settlement than are transit managements or the municipalities they serve. As long as these conditions prevail, transit labor unions can be expected to demand and obtain lucrative settlements for their members without any commensurate increase in productivity.

TRANSIT OPERATIONS AND THE LABOR CONTRACT

It is generally understood by those who have some knowledge of transit operations that union agreements do not allow workers to perform tasks outside of their job classifications. Operators, for example, are not permitted to do maintenance work and vice versa. Transit personnel are guaranteed 40 hours of work (or pay) per week regardless of whether or not 40 hours or work has been available or performed. For example, peak period patronage (usually occurring from 7:00 a.m. to 9:00 a.m. and

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again from 4:00 p.m. to 6:00 p.m.) may account for 40 to 60 percent of the system's daily passenger loads. In this case then, operators may work four (4) hours per day while being paid for eight (8) hours. It is also likely that the labor contract will limit the span of time in which eight (8) hours of work can be completed (discussed in more detail later). For example, the previous peak hour case would require the operator to complete an eight (8) hour day in a span of 11 hours. Therefore, it becomes very expensive or impossible for many urban transit systems to accommodate additional peak hour demands for transit service.

The management of transit operations requires detailed and complex coordination of drivers, schedules, and equipment. The layman will find the maze of operational problems and labor constraints almost too complicated to understand without detailed study. However, labor contracts and the restraints they impose on transit operations, constitute a very important component of the total cost and relative efficiency of transit service. Coordination among routes and efficient utilization of labor can significantly increase the productivity of the work force. Pieces of work can be combined and schedules can be adjusted to some extent. However, most union agreements place restrictions on management's prerogatives in assigning part-time or piece work. The relative restrictiveness of the negotiated contract will increase or decrease the cost of the bus service.

The most important section of union contracts in terms of their effect on route operations, are restrictions on the maximum numbers of split runs (or minimum numbers of "one-piece" runs) and maximum amounts of spread time between runs. Generally, split runs refer to situations

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where a transit operator cannot complete eight hours of work in nine consecutive hours (assuming a one-hour lunch). For example, he or she might work from 6:00 a.m. to 9:00 a.m. and then again from 3:00 p.m. to 6:00 p.m. The union agreement may specify that 60 percent of all runs must be "one-piece" or that the maximum time interval in which an eight-hour work day must be completed is 11 hours. Therefore, a bus driver could not work from 6:00 a.m. to 9:00 a.m. and then 3:00 p.m. to 6:00 p.m. (peak hours) under the 11-hour spread limitation. Moreover, transit operators are usually guaranteed eight hours of paid time per day. The use of transit vehicles and personnel for large-scale, peak-period, transit service may not be practical under many labor contracts. Or, if provision of this service has very high priority in a political sense, the service could be provided only at very high cost. Under such circumstances, vehicle operators may only work two or three hours while getting paid for eight under the terms of the contract. For example, contained in the mailed survey was the following question:

> Which clauses in your present union contract most adversely affect the efficiency of transit operations?

One of the respondents described his operations as follows (restructured slightly for clarity):

> Our service requirements are such that two to three times more buses are on the street during rush hours. Peak periods (7:30 a.m. and 5:00 p.m.) would require 838 and 851 buses respectively, while midday bus requirements are 300. With this distribution of work, the following work rules do reduce driver productivity:
>
> a. Spread penalty. Any driver who is on duty over 10.5 hours receives 50 percent premium pay for any time in excess of 10.5 hours on the job. Most drivers are required to work both peaks (which means they are on duty from approximately 6:30 a.m. to 6:00 p.m.), and this is, therefore, very expensive. Spread penalty is paid even though they may be off six or seven hours between assignments.

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b. Straight runs must equal at least 60 percent of total runs. Because of the peak service requirements, it is not possible to build the required number of one-piece runs. Therefore, much of the work ends up unassigned on the "extra board."

c. Regardless of the length of the piece of work, a two-hour minimum must be paid.

d. Drivers are guaranteed 40 hours per week and in many cases, the actual pay time is less than 40 hours; drivers are, therefore, paid for 40 hours even though they may not work that amount of time in a week.

e. There are other work rules which have a lesser impact on productivity.

Another survey respondent pointed out the impact of the labor agreement on his operations (in response to another question):

> Operators (A.T.U.). The present labor agreement now in effect limits full management prerogative. Contingencies in this agreement contain restrictions in scheduling of passenger vehicles and deployment of Union personnel in the various categories which increases our cost to approximately $100,000 per month in doing business under the terms of this agreement.
>
> Office Employees (A.T.U.). Management has been somewhat unsuccessful in its efforts to negotiate out of the contract a provision established in 1946 which sets forth job titles, work restrictions, etc., which has been a continuous obstacle in up-dating and bringing about a more efficient operation.

Contract limitations on split runs and spread times vary from one organization to another. In another property, for example, there are minimums of 60 percent one-piece runs (eight hours work in nine hours) on weekdays, 80 percent one-piece runs on Saturdays, and 95 percent runs on Sundays. Limitations on spread times for split runs vary as well. Some city transit operations must complete eight hours of work within 11 hours for split runs. Others may have 13-hour maximums or the operators may be paid time and one-half for work which falls beyond the maximum spread time. One can safely assume that those cities with many restric-

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tions in their labor agreement are paying a premium price for transit service.

One transit system, for example, pays a portion of its operator's time and one-half each work week due to restricted work rules. As the general manager stated:

> We have experienced large numbers of operators laying off on their regularly scheduled work days which required paying overtime in covering their work. In many instances, man covering this work on their off day at time and one-half had in fact themselves laid off on one or more days of their regularly scheduled work days. Employees required to work on their day off are guaranteed not less than two hours work and are paid time and one-half for the time worked, regardless of the assigned days they have or have not worked.

The existence of restrictive labor agreements in any one system can have adverse effects on other systems. When labor negotiators come to the bargaining table, the arguments used to support demands center on the labor agreements reached in other parts of the country. In most cases, one would expect the labor negotiators to attempt to extract the most favorable agreement possible for unionized workers. Therefore, contracts in other cities which are exceptionally favorable to labor will be the basis of comparison for any given city. Since Federal operating subsidies were a new and quickly growing source of transit revenue, one could assume this characteristic of negotiations would become more common.

Virtually all labor contracts specify that assignments of drivers to routes are to be made on the basis of seniority. For the most part, transit operators change the structure of driver runs a minimum of twice per year to coincide with the school year. Many contracts call for new picks of runs by drivers three or four times per year. In either case,

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as soon as the revised run schedule is completed by management, drivers sign up for the runs on the basis of seniority. Thus, those with the highest seniority are given the first opportunity to obtain straight runs.

Most contracts specify that when a schedule or run is changed in any way whatsoever, the run must be made available first to those employees with highest seniority. In other words, when any single run is changed, a completely new sign-up for all runs is required. Therefore, if management finds it necessary to make adjustments in driver and run schedules, either an entirely new sign-up is required or the adjustment must wait until the following pick of runs. For example, if managemant finds that too much time has been alotted to return to the bus barn on a given run, the adjustment cannot be made unless a new pick of runs is held. This can be a slow process which requires several days, depending on the size of the transit operation. If a city has 600 transit operators, for example, each man must be relieved from his run at some time to pick from the new schedule. Obviously, considerable amounts of time are involved in this process both for management and the employees. However, the most important impact of this arrangement is the lack of flexibility imposed on operations. Even relatively small adjustments in driver and route schedules will make it necessary for management to hold an entirely new pick of runs.

In every transit operation there is a need for "floating" employees--those employees who are not assigned to specific runs but fill in wherever they are needed. If regular operators are sick, late for work, on vacation or personal leave, these "extra" operators assume the responsi-

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bilities of the regular operator. Extra operators are also needed for charter runs when they occur. Typically these drivers have too little seniority to choose regular runs and are often younger operators. Union contracts generally place restrictions on the use of these drivers similar to the limitations placed on regular operators. In most cases, extra drivers are guaranteed 40 hours of paid time per week regardless of whether 40 hours of work exists. They are considered regular operators when filling in on a regular run. The same rules relative to the performance of duties apply to them as would apply to regular operators. Therefore, extra operators cannot be used to fill in the gaps in the local transit operation when they are used to replace regular operators. The following rules taken from actual union contracts, illustrate such restrictions.

1. No extra work can be assigned to an extra operator when he is filling in for a regular driver.

2. When extra operators work temporary runs, they will be considered regular operators.

3. Extra operators must be assigned in advance; they are not on call. (Assignments must be made at least a day in advance, before the actual needs of the following day can be determined.)

4. Forty hours of paid time per week are guaranteed.

5. Seven or eight hours of paid time per day is guaranteed.

6. There is a maximum number of hours in which an extra operator must complete his work day.

7. The number of days off each week and the conditions under which they occur are specified.

The exact rules which apply to any given transit operation and their degree of restrictiveness vary for each city transit service. However, it should be apparent that lack of flexibility in scheduling

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these drivers will increase costs and lower productivity of the work force. The need for extra drivers on any given day will fluctuate; but the supply of drivers must be predetermined. In order to assure that transit service is not interrupted, the number of drivers available must be sufficient to cover any number of absentees, lates, and charter runs which might occur on a given day. Therefore, except for seasonal variations in manpower needs which can be anticipated, it is necessary to have the maximum number of extra drivers to cover all potential "gaps" in operations. It is obvious that some drivers will be idle on many days of the year which will increase the cost of transit operations.

EFFECT ON WAGES

The total effect of these restrictive work rules has resulted in a costly outdated method of public transportation operations and, the imbalance of power between management and labor, greatly assisted by section 13c of the UMT act, continues to render management attempts to rectify the situation ineffective. No where is this imbalance more evident than in the cost of the basic wage rate for transit operators. A recent study by the California Department of Transportation entitled, "Trends in California Transit Labor Contract Settlements" concluded,

> "There is a divergency trend between California transit operators wage rates and the CPI which is likely to accelerate in the absence of change in transit labor contract negotiations. This trend in California follows a nationwide pattern identified by others."[3]

Not only are transit wage rates rising faster than the CPI but transit wages have been and continue to be significantly higher than those in the private mass transportation sector. Moreover, wages for public

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transit employees are increasing at a faster rate than general wage rates in private industries.

SUMMARY

While it might be befitting to end this testimony on a very pessimistic note, such will not be the case. There can be an optimisitic outlook for traditional mass transit systems. Ironically, the one aspect which may bring about creative and innovative change in traditional mass transit systems in the United States today is that traditional transit per se may become too expensive to provide. Restrictive work rules and organized labor wages combine to make the servicing of commuter peak market uneconomical in many urban areas. As the general public, i.e. taxpayers are educated as to the true costs involved of such systems, there may be demands by responsive public officials for reorganization and change in traditional mass transit systems. By responsive public officials one is speaking of elected public officials who are interested in establishing sound economic settlements with organized employees of their municipalities, not one of whom is interested only in preserving labor peace during the time of their political office. The New York debacle has brought home to many urban areas the question of permitting elected public officials to bargain in wage and pension settlements which would cover a period of time extending beyond their own term of office. As recent developments have shown, such settlements may make it impossible for future city administrations to ever pay for the agreement.

This testimony has brought forth an obvious need for a change in our approach to labor protection. The true social costs involved in restrictive work rules are becoming painfully evident as cities such as

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Birmingham, Alabama close their transit doors and the Chicago RTA operates on a day-to-day financial crisis. Methods or organizations which could be better utilized to improve the efficiency of traditional mass transit systems in operation today need to be developed. Changes are definitely needed to improve the bargaining position for transit management. It is also painfully obvious that transit management has very little power in the existing collective bargaining process. I am not optimistic about such changes being brought about easily. The institutional constraints and power of the labor unions are such that innovative creative change is deemed highly improbable without major confrontation. What is probable, however, is that many smaller and medium-sized urban areas that are not constrained by existing status quo arrangements will utilize innovative approaches in attempting to revitalize and reorganize their approach to public transportation. It is these smaller efforts which will be documented, categorized, and referenced for planners of larger urban areas. Hopefully, over a period of time, improvements will be transferred to a larger urban area through responsible public officials.

REFERENCES

1. Hilton, George W., Federal Transit Subsidies: The Urban Mass Transportation Assistance Program, pp. 109-110.

2. Avery, George A., "Breaking the Cycle: Regulation and Transportation Policy," Urban Affairs Quarterly, Vol. 8, No. 4, June, 1973, pp. 423-426.

3. Rae, James W., and Grob, Michael A., Division of Mass Transportation, California Department of Transportation, Sacramento, CA.

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The CHAIRMAN. Now we will hear from Mr. Pendelton.

STATEMENT OF CLARENCE PENDELTON, JR., CHAIRMAN OF THE BOARD OF DIRECTORS, SAN DIEGO TRANSIT CORP.; ACCOMPANIED BY CURTIS FITZPATRICK, SENIOR DEPUTY ATTORNEY FOR THE CITY OF SAN DIEGO; AND LAWRENCE PATTON, GENERAL COUNSEL FOR THE SAN DIEGO TRANSIT CORP.

Mr. PENDELTON. Thank you, Mr. Chairman. My name is Clarence M. Pendelton, Jr., and I'm chairman of the board of the San Diego Transit Corp., and I'm also president of the Urban League of San Diego, accompanied today by Mr. Curtis Fitzpatrick, senior chief deputy attorney for the city of San Diego, and Mr. Lawrence Patton, General Counsel for the San Diego Transit Corp.

San Diego Transit Corp. is a nonprofit corporation created under the laws of California, the sole member of which is the city of San Diego. It employs an average of 900 persons. The bus drivers and clerical employees are represented by Amalgamated Transit Union and the mechanics by International Brotherhood of Electrical Workers. It operates an average of 300 buses daily, carrying 115,000 passengers. It receives approximately 43 percent of its revenue out of the fare box. For fiscal year 1981-82, to balance its budget, a fare increase of 20 cents will be invoked and a 10-percent reduction of service will take place. These steps have been taken because of inflation and the fact that Federal funding has not kept pace with inflation.

San Diego Transit Corp. appreciates the opportunity to appear before this honorable subcommittee to describe its experiences as they relate to the labor protection provisions of the Urban Mass Transportation Act contained in section 13(c) of that act.

By way of history, the Urban Mass Transportation Act originally authorized capital grants—and later operating assistance—to acquire, improve and maintain existing transit systems. To protect the interests of employees, section 13(c) of the act required that before such grants could be made, the Secretary of Labor had to certify that fair and equitable arrangements had been made so that employees were protected against a worsening of their employment conditions.

Traditionally, the Department of Labor has first determined whether the employees were represented by a labor union, and, if so, has left it to the employer-applicant and the union to arrive at a satisfactory agreement that the employees were adequately protected.

SECTION 13(C) MAINTAINS STATUS QUO

Legislative history demonstrates that the purpose of section 13(c) was to maintain the status quo concerning the rights and benefits which labor had acquired throughout the years when transit was in the hands of the private sector. It is safe to say that San Diego Transit Corp. echoes the sentiment of the public transit industry nationwide that management did not and does not object to the theory of protection of these rights but the unions have seized this as an opportunity to build upon and expand those rights far beyond what was intended.

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By abdicating its duty to merely determine that employees rights were not worsened, DOL has permitted unions to effectively gain additional rights and benefits. The reason is simple: Any applicant seeking funds to acquire, improve or more effectively operate its system has found itself bludgeoned by the union with the ultimatum to sign on the union's terms or there would be no DOL approval. The parties were not, at that point, in equal bargaining positions. With their desire to provide the bus riding public with better, faster and cheaper mass transportation, transit management sought help provided under the Urban Mass Transportation Act. Under such circumstances, time was literally money because of the planning process called for to carry out these desires. At that point, management was at the mercy of its union and continually had to accept constantly expanding demands or forfeit planning improvements.

When San Diego Transit Corp. was created in 1966 for the purpose of assuming ownership and operation of the existing privately owned transit system, the city of San Diego sought and received a capital grant. As part of the application, it entered into a section 13(c), then section 10(c) of the act, agreement with the unions on the property. It was a simple agreement containing a few paragraphs, and in the main, the corporation covenanted that it would not do anything to worsen the conditions of its employees. This agreement was continued for each succeeding grant until 1973 when the union refused to inform DOL of its approval until a new and expanded 13(c) agreement was reached.

For the first time, the union insisted upon language dealing with arbitration under certain circumstances. It is interesting to note that the agreement provides that either party may seek arbitration to resolve certain issues. Later, San Diego Transit Corp. was a party to the so-called national agreement entered into by virtually all of the transit operations in the United States and the unions representing their employees. This arose when operating grants were permitted under the act. This agreement also contained the provision that either party may seek arbitration under certain circumstances. This agreement also provided many extended benefits insisted upon by the unions and never negotiated in the collective bargaining arena. Again, faced with literally no alternative if San Diego Transit Corp. wished to receive operating funds, management accepted the terms thrust upon it.

BARGAINING SESSIONS DEADLOCKED

San Diego Transit Corp. saw its worst fears realized in December 1978. The collective bargaining agreement between management and the unions was to expire on December 31, 1978. Because of a compounding type of cost-of-living provision in this and former agreements and with inflation soaring, the costs of operation had to be checked. During a 2-month period, numerous and extended bargaining sessions resulted in a deadlock.

At that point, the union brought suit in the U.S. district court and sought an injunction ordering San Diego Transit Corp. to arbitrate a successor agreement pursuant to the arbitration provisions in the 13(c) agreements. In spite of the fact that the bus drivers union had been declared private employees in 1970, bring-

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ing on a 49-day strike by the union, and despite the fact that there was not and never had been a provision for compulsory interest arbitration in the collective bargaining agreement, the court granted the union's request.

San Diego Transit Corp. pointed out that such a decision would interpret the word "may" in the 13(c) agreements to mean "shall" and pointed out that the decision would give the union its jealously retained right to strike or to arbitrate as it saw fit, regardless of the effect on the corporation, but the court brushed aside these arguments. The court saw fit to follow certain other cases decided in courts in other parts of the country. In each of the other cases, there was either a provision for arbitration or the employees were public employees without a right to strike.

The courts in all of the cases looked to the 13(c) agreement as the sole document involved. Thus the legislation enacted several years before to provide employees the right to merely maintain rights previously negotiated in the collective bargaining atmosphere, became a source of power to the unions which were certainly never envisioned by Congress. Employees have been granted many rights by labor legislation adopted throughout the years, and it is unfair to the ultimate consumer, the bus riding public, to permit legislation to be subverted as has taken place in the section 13(c) area.

It is virtually impossible to place a definite dollar and cents cost to San Diego Transit Corp. by reason of the 13(c) requirements. We can state that the delays created in part by the redtape involved in the regulatory process used by the Urban Mass Transit Administration coupled with the union's delays while seeking further concessions has greatly increased the costs of capital equipment simply because of inflation. In addition, San Diego Transit Corp. has had to maintain portions of its fleet of buses long beyond their useful life, thereby creating substantially increased maintenance costs as well as some danger to the bus riding public because of poor equipment on the streets.

PROGRESS IMPEDED

This may be contrasted with the progress of the Metropolitan Transit Development Board, a creature of the California Legislature. The Metropolitan Transit Development Board was given broad powers, but its first mandate was to create a trolley system in San Diego and extending to the Mexican border. State funding through gas and sales tax moneys was made available, and the Metropolitan Transit Development Board was able to move swiftly to acquire an existing rail system and rights of way at what is [illegible] price. Acting independently, it was able to [illegible] trolley [illegible] desired. This timetable results: [illegible] was issued; January 1979, a [illegible] April 1979, a contract was signed; [illegible] of trolleys began. Contrast this [illegible] sought the purchase of 38 new [illegible] approval of the grant applica- [illegible] Delivery of the first bus took place [illegible] during this period increased [illegible]

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ADDITIONAL DETRIMENT

An additional detriment of 13(c) relates not to cost but to service. The legislation as administratively applied and judicially interpreted has handcuffed San Diego Transit Corp. in experimenting with new and innovative methods of transporting the elderly and the handicapped. The use of taxis and other paratransit systems immediately brings into play the questions of worsening the conditions of present employees. The unions have zealously guarded their rights, demanding, for example, the same rates of pay to operate small vans as drivers are paid to operate a bus carrying 45 or 50 passengers in heavier and different traffic situations. Simply put, because of 13(c) constraints the numerous problems, including labor costs make experimentation difficult if not impossible and innovation goes out the window.

San Diego Transit Corp. respectfully urges that clarifying and modifying legislation is essential.

San Diego Transit Corp's., recommendations are: One, section 13(c) provisions should not be applied to section 5 grants. Two, provide for UMTA to administratively allow for a negative declaration on all grants after a 30-day response period from the union and to act independently on all grants to operators whether they have a negotiated 13(c) or not. Three, specify in the law that: Under this provision unions or management cannot delay this process as a means to achieving an advantage in any way. In no circumstances will this provision interfere with the collective bargaining process as outlined under the NLRB or the various State statutes pertaining to labor negotiations. This provision cannot be used to force interest arbitration, or any other advantageous tool for either party in the collective bargaining process.

Our comments regarding DOT's 504 regulations are: The San Diego Transit Corp. was the first major transit operation in the country to offer wheelchair lift service on regular bus routes. The experience has not been encouraging. The service was concentrated in the center of the disabled community. After 3 years of operation there was an average of 20 rides per month. A comparison to the regular ridership on these routes indicates that 1 in every 45,000 boarding passengers used the lift. The cost of service, including the original cost of the lifts, amount to $600 per ride. The cost of the fare at that time was 65 cents.

The corporation will be receiving five new wheelchair lift buses next month. The cost of equipping the buses with lifts added $780,000 to the order. Without DOT's 504 regulations the corporation could have purchased six additional buses.

San Diego Transit supports APTA's proposed revisions. The corporation's testimony is buttressed by the attached resolution from the city council of the city of San Diego adopted on May 18, 1981.

We would like also the opportunity, if the record is kept open, to prepare some written responses, and I am prepared to answer any questions you might have.

Senator LUGAR. You will have that opportunity. The record will be kept open for cross responses for 2 weeks.

Thank you very much, Mr. Pendelton.

[Complete statement and resolution follow:]

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TESTIMONY OF

CLARENCE PENDELTON, JR.

CHAIRMAN OF THE BOARD OF DIRECTORS

SAN DIEGO TRANSIT CORPORATION

My name is Clarence M. Pendleton, Jr. I am Chairman of the Board of Directors of San Diego Transit Corporation. I am also President of the Urban League of San Diego.

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San Diego Transit Corporation appreciates the opportunity to appear before this honorable sub-committee to describe its experiences as they relate to the labor protection provisions of the Urban Mass Transportation Act contained in section 13(c) of that act.

By way of history, the Urban Mass Transportation Act originally authorized capital grants -- and later operating assistance -- to acquire, improve and maintain existing transit systems. To protect the interests of employees, section 13(c) of the act required that before such grants could be made, the Secretary of Labor had to certify that fair and equitable arrangements had been made so that employees were protected against a worsening of their employment conditions.

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Traditionally, the Department of Labor (DOL) has first determined whether the employees were represented by a labor union, and, if so, has left it to the employer-applicant and the union to arrive at a satisfactory agreement that the employees were adequately protected.

Legislative history demonstrates that the purpose of section 13(c) was to maintain the status quo concerning the rights and benefits which labor had acquired throughout the years when transit was in the hands of the private sector. It is safe to say that San Diego Transit Corporation echoes the sentiment of the public transit industry nationwide that management did not and does not object to the theory of protection of these rights but the unions have seized this as an opportunity to build upon and expand those rights far beyond what was intended.

By abdicating its duty to merely determine that employees rights were not worsened, DOL has permitted unions to effectively gain additional rights and benefits. The reason is simple: Any applicant seeking funds to acquire, improve or more effectively operate its system has found itself bludgeoned by the union with the ultimatum to sign on the union's terms or there would be no DOL approval. The parties were not, at that point, in equal bargaining positions. With their desire to provide the bus riding public with better, faster and cheaper mass transportation, transit management sought help provided under the Urban Mass Transportation Act. Under such circumstances, time was literally money because of the planning process called for to carry out these desires. At that point, management was at the mercy of its union and continually had to accept constantly expanding demands or forfeit planned improvements.

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For the first time, the union insisted upon language dealing with arbitration under certain circumstances. It is interesting to note that the agreement provides that either party may seek arbitration to resolve certain issues. Later, San Diego Transit Corporation was a party to the so-called national agreement entered into by virtually all of the transit operators in the United States and the unions representing their employees. This arose when operating grants were permitted under the act. This agreement also contained the provision that either party may seek arbitration under certain circumstances. This agreement also provided many extended benefits insisted upon by the unions and never negotiated in the collective bargaining arena. Again, faced with literally no alternative if San Diego Transit Corporation wished to receive operating funds, management accepted the terms thrust upon it.

San Diego Transit Corporation saw its worst fears realized in December, 1978. The collective bargaining agreement between management and the unions was to expire on December 31, 1978. Because of a compounding type of cost-of-living provision in this and former

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agreements and with inflation soaring, the costs of operation had to be checked. During a two-month period, numerous and extended bargaining sessions resulted in a deadlock.

At that point, the union brought suit in the U.S. District Court and sought an injunction ordering San Diego Transit Corporation to arbitrate a successor agreement pursuant to the arbitration provisions in the 13(c) agreements. In spite of the fact that the bus drivers union had been declared private employees in 1970, bringing on a forty-nine day strike by the union, and despite the fact that there was not and never had been a provision for compulsory interest arbitration in the collective bargaining agreement, the court granted the union's request.

San Diego Transit Corporation pointed out that such a decision would interpret the word "may" in the 13(c) agreements to mean "shall" and pointed out that the decision would give the union its jealousy retained right to strike or to arbitrate as it saw fit, regardless of the effect on the corporation, but the court brushed aside these arguments. The court saw fit to follow certain other cases decided in courts in other parts of the country. In each of the other cases, there was either a provision for arbitration or the employees were public employees without a right to strike.

The courts in all of the cases looked to the 13(c) agreement as the sole document involved. Thus the legislation enacted several years before to provide employees the right to merely maintain rights previously negotiated in the collective bargaining atmosphere, became a source of power to the unions which were certainly never envisioned by Congress. Employees have been granted many rights by labor legislation adopted throughout the years, and it is unfair

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It is virtually impossible to place a definite dollar and cents cost to San Diego Transit Corporation by reason of the 13(c) requirements. We can state that the delays created in part by the red tape involved in the regulatory process used by the Urban Mass Transit Administration coupled with the union's delays while seeking further concessions has greatly increased the costs of capital equipment simply because of inflation. In addition, San Diego Transit Corporation has had to maintain portions of its fleet of buses long beyond their useful life, thereby creating substantially increased maintenance costs as well as some danger to the bus riding public because of poor equipment on the streets.

This may be contrasted with the progress of the Metropolitan Transit Development Board, a creature of the California legislature. The Metropolitan Transit Development Board was given broad powers, but its first mandate was to create a trolley system in San Diego and extending to the Mexican border. State funding through gas and sales tax moneys was made available, and the Metropolitan Transit Development Board was able to move swiftly to acquire an existing rail system and rights of way at what is considered a bargain price. Acting independently, it was able to determine the type of trolley it desired. This timetable resulted: November, 1978 a request for bids was issued; January, 1979 a letter of intent was executed; April, 1979 a contract was signed; and September, 1980 a delivery of trolleys began. Contrast this with San Diego Transit Corporation who sought the purchase of thirty-eight new buses. It was nearly two years before approval of the grant applications plus two years

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for delivery. Delivery of the first bus took place last Saturday, May 16, 1981. Inflation during this period increased the cost of each bus substantially.

An additional detriment of 13(c) relates not to cost but to service. The legislation as administratively applied and judicially interpreted has handcuffed San Diego Transit Corporation in experimenting with new and innovative methods of transporting the elderly and the handicapped. The use of taxis or other para-transit systems immediately brings into play the questions of worsening the conditions of present employees. The unions have zealously guarded their rights, demanding, for example, the same rates of pay to operate small vans as drivers are paid to operate a bus carrying forty-five or fifty passengers in heavier and different traffic situations. Simply put, because of 13(c) constraints the numerous problems, including labor costs make experimentation difficult if not impossible and innovation "goes out the window."

San Diego Transit Corporation respectfully urges that clarifying and modifying legislation is essential.

San Diego Transit Corporation's recommendations are:

1. Section 13(c) provisions should <u>not</u> be applied to Section 5 grants.
2. Provide for UMTA to administratively allow for a negative declaration on all grants after a thirty-day response period from the union and to act independently on all grants to operators whether they have a negotiated 13(c) or not.
3. Specify in the law that "under this provision unions or management cannot delay this process as a means to achieving an advantage in any way. In no

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circumstance will this provision interfere with the collective bargaining process as outlined under the NLRB or the various state statutes pertaining to labor negotiations. This provision cannot be used to force interest arbitration, or any other advantageous tool for either party in the collective bargaining process.

Our comments regarding DOT's 504 regulations are:

The San Diego Transit Corporation was the first major transit operator in the country to offer wheelchair lift service on regular bus routes. The experience has not been encouraging. The service was concentrated in the center of the disabled community. After three years of operation there was an average of twenty rides per month. A comparisson to the regular riderships on these routes indicates that 1 in every 45,000 boarding passengers used the lift. The cost of service, including the original cost of the lifts, amounted to $600 per ride. The cost of the fare at that time was 65 cents.

The Corporation will be receiving five new wheelchair lift buses next month. The cost of equipping the buses with lifts added $780,000 to the order. Without DOT's 504 regulations the Corporation could have purchased six additional buses.

San Diego Transit supports APTA's proposed revisions. The Corporation's testimony is buttressed by the attached resolution from the City Council of the City of San Diego adopted on May 18, 1981.

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A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SAN DIEGO, CALIFORNIA
ADOPTED ON MAY 18, 1981
ATTACHED TO THE PREPARED STATEMENT OF
CLARENCE PENDLETON,
CHAIRMAN OF THE BOARD OF DIRECTORS,
SAN DIEGO TRANSIT CORPORATION
ON BEHALF OF THE SAN DIEGO TRANSIT CORPORATION
AND THE CITY OF SAN DIEGO, CALIFORNIA

RESOLUTION NO. _____ R. 81-2172

WHEREAS, the Housing and Urban Affairs Subcommittee of the United States Senate Banking, Housing and Urban Affairs Committee, proposes on May 20, 1981 to commence hearings concerning the impact of federal laws and regulations on States and local entities; and

WHEREAS, among other things, one statutory provision which is to be considered by the Subcommitteee is Section 13C of the Urban Mass Transportation Act, as amended; and

WHEREAS, this City Council has heretofore taken a position that Section 13C of the Act as applied administratively and construed judicially has placed unreasonable constraints upon public entities seeking to provide public mass transportation; and

WHEREAS, the City Council of the City continues to believe that Section 13C of the Act does unreasonably constrain its ability to provide public mass transportation for the citizens of the City of San Diego and to proceed with new and innovative methods of providing such service; NOW, THEREFORE,

BE IT RESOLVED, that this City Council urges the United States Congress to seriously consider amendments to Section 13C of the Urban Mass Transportation Act which will remove the constraints upon public entities as heretofore established by administrative determinations and judicial decisions and thereby provide public entities with the ability to consider new and innovative methods of furnishing public mass transportation without unreasonable constraints.

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BE IT FURTHER RESOLVED, that it is the sense of this City Council that one method of accomplishing the goal set forth above is by amendments to the Urban Mass Transportation Act and Section 13C of that Act which will enable and allow the respective States of this United States of America and the local entities therein to treat public transit employees as public employees for purposes of their conditions of employment and establish the terms thereof accordingly by enacting legislation similar to the statutory provisions of the Fair Labor Standards Act as interpreted by the Supreme Court of the United States in National League of Cities v. Usery, or in the alternative, enact legislation which would prohibit the right of public transit employees to strike or demand compulsory binding interest arbitration.

BE IT FURTHER RESOLVED, that a representative of the City Attorney's office be and he is hereby authorized to travel to Washington, D. C. May 19-21, 1981 to provide written and oral testimony to said Subcommittee for the purpose as set forth above and to incur all necessary expenses.

APPROVED: JOHN W. WITT, City Attorney

By C. M. Fitzpatrick
C. M. Fitzpatrick
Senior Chief Deputy

CMF:vl:071 (x474.6)
5/19/81
Or. Dept.: Atty.

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Senator LUGAR. The Chair now calls on Mr. Victor Sood for his testimony.

STATEMENT OF VICTOR SOOD, DIRECTOR, SNOHOMISH COUNTY PUBLIC TRANSIT BENEFIT AREA CORP., ACCOMPANIED BY ALLEN HENDRICKS

Mr. SOOD. Thank you, Mr. Chairman. My name is Vic Sood, and I am the director of the Snohomish County Public Transit Benefit Area Corp., also known as Community Transit, a public transit agency located in the county of Snohomish north of Seattle in the State of Washington.

Accompanying me today is our attorney, Mr. Allen Hendricks.

DECLINED FEDERAL FUNDS

We are perhaps one of the few, if not the only public transit agency in the United States, that has declined to accept Federal funds due to our refusal to sign the 13(c) agreement.

By way of our background our corporation started providing transit service in October of 1976 in an area which had no public transit. Earlier that year, in June of 1976, the voters in the transit district approved the imposition of a three-tenths of 1 percent retail sales tax by an overwhelming 79 percent yes vote to subsidize the system. Subsequently, eight more communities approved the imposition of the sales tax and were annexed to the transit district, the last community to be annexed by an unprecedented 95 percent yes vote approved the sales tax increase and annexation. In October of 1976, the service was provided by 18 leased coaches built in years 1960 and 1965.

The bus operators were all new employees. They formed a collective bargaining unit in early 1977 under Washington State law, and are a local branch of the Amalgamated Transit Union. Soon after this, we negotiated a local labor agreement with this local governing wages, benefits, et cetera.

In March of 1977, the corporation submitted a capital grant application to the Urban Mass Transportation Administration for about $1.6 million for the purchase of new coaches, shelters and bus stop signs. In May 1977, UMTA sent a copy of this application to the Department of Labor, requesting certification pursuant to section 13(c) of the act. The next 10 months was a most frustrating experience for the board of directors and the staff of the corporation to reach a 13(c) agreement with officials of the Amalgamated Transit Union in Washington, D.C. We made two trips to Washington, D.C., to reach agreement with the attorney of the Amalgamated Transit Union in Washington, D.C. On a number of occasions the officials of the Department of Labor stated quite clearly to us on the telephone that in their opinion our proposals were not even acceptable to them. Subsequently, it all culminated in a mediation session at the Department of Labor in Washington, D.C., and a deadlock was reached. It was the position of the corporation that an appeal to the Secretary of Labor would be time consuming and probably fruitless. All this time the needs of the community remained to be met.

13(C) AGREEMENT UNACCEPTABLE

We found that the 13(c) agreement presented to us by the Amalgamated Transit Union contained many provisions unacceptable to

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a new public transit agency which had neither taken over an existing dying transit system nor was merging with another existing system. One of the provisions related to interest arbitration. Such a provision in our opinion is contrary to Washington State law. Further, it is our opinion that the normal give and take which occurs in negotiations of labor contracts is thrown out by the wayside during negotiations for a 13(c) agreement. The attitude is "Take what we give you or no Federal funds."

Soon after contacts were made with the staff of the Department of Labor and the attorney of the Amalgamated Transit Union, it started to dawn upon us that we were engaged in a process where there was only one winner, and that was the Amalgamated Transit Union. It was like David battling Goliath, and I do not have to tell you as to who was David.

The board of directors decided to slow down future expansion of this young system, and with local funds saved, spent $2 million to purchase 24 new buses, and keep the original leased buses.

We went out for bid in June of 1977 and within 10 months we had the new buses on the property.

We are part of an urbanized area and eligible to receive section 5 funds for capital acquisition or operating subsidies. It is interesting to note that the $2 million of local funds spent to purchase buses could have brought us $8 million of Federal funds. The decision of the board not to accept Federal funds due to lack of a 13(c) agreement was supported by local civic leaders and by editorials in local newspapers and on radio stations.

Since we decided to go our own way further research by us into the impacts of the 13(c) agreements in other transit systems leads us to the conclusion that our fears and concerns were well founded. The sacrifice our corporation made has allowed us to control our own destiny, and any transit system which can control its own destiny will survive the very difficult times ahead.

PROBLEMS ENCOUNTERED

Our research indicates that the following are some of the problems public transit systems have encountered in the 13(c) process.

During the 13(c) negotiating process it was made clear that unless we reached an agreement with the union on a 13(c) agreement we would not receive our Federal grant funds. Clearly, the union had all the leverage in this process. As a matter of fact, the following are some examples of how the union has tried to obtain concessions over and beyond employee job protective arrangements. The union has consistently tried to obtain interest arbitration through the 13(c) process. Interest arbitration is a process involved if labor and management fail to reach a local labor agreement. In such process, the arbitration establishes the terms of the new labor agreement. For example, in order to receive its operating funds grant in 1980, Seattle Metro was required to agree to an addendum to the basic operating funds agreement which was hammered out in very touchy negotiations several years ago. The effect of the addendum to which Metro had to agree, or unnecessarily delay the grant, was to make it easier for the local union to argue that Metro was required to participate in interest arbitration of the issues

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which would normally be the subject of collective bargaining between Metro and local 587.

The union attempted to obtain a union shop as a part of the 13(c) process involving the Golden Gate Bridge Authority. It should be noted that a union shop is forbidden under California law.

In Stockton, Calif., the union requested to arbitrate the provision of an employee retirement plan pursuant to section 13(c) agreement. The trial court has held in favor of the union by stating that the "13(c) agreement," as it applies to proposed changes in the retirement plan is enforceable notwithstanding contrary to state law.

In Oakland, Calif., the union maintained that pursuant to section 13(c) that the purchase of articulated transit coaches with Federal funds caused a change in the driver's working condition and that therefore the driver's were entitled to more pay.

The 13(c) process causes transit managers to be very reluctant to use Federal funds to initiate cost savings programs or experimental programs for fear of 13(c) claims.

We could never understand why our agency, being a new transit system in a relatively urban and rural area had to agree to labor protective agreements that essentially applied to takeovers and mergers with existing systems.

The employees of our neighboring public transit systems to the south, Seattle Metro and to the north, city of Everett, which have 13(c) agreements are paid bus operators making approximately $2 per hour more than our employees. It appears to us that the 13(c) agreements with interest arbitration provisions would have caused our employees to receive the same salary as the employees of the neighboring systems.

I am also concerned with what will happen when the section 5 operating subsidies are phased out completely by 1985. It appears to us that the phasing out of such funding and present inflation would cause the service cutbacks with the resulted layoff of employees covered under the provision of section 13(c). It appears that such a layoff of employees would be construed as a worsening of their position and thus entitle them to protection of 13(c) dismissal allowance. For example, if only 6 employees are laid off and if all of them have over six years of service, the cost of the dismissal allowances under 13(c) would be $1 million.

REPEAL SECTION 13(c)

In conclusion, we think that it should be obvious and in fact, is obvious to the transit industry as a whole, that the process developed to implement this act has created a monster that should be dealt with by the Congress of the United States. The only way to eliminate the monster and to give the transit systems at the local level new life is to repeal 13(c).

We also would like to respond to the testimony presented today, and, Mr. Chairman, thank you very much for giving me the opportunity to testify.

Senator LUGAR. Mr. Sood, you will have an opportunity to forward those responses. We thank you for your testimony.

Senator Williams, do you have any opening statement that you would like to make?

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Senator WILLIAMS. I would like to include it in the record, if I may, Mr. Chairman.

Senator LUGAR. Without objection, so ordered.

[Senator Williams' statement follows:]

STATEMENT OF SENATOR WILLIAMS

Senator WILLIAMS. As the committee begins its second day of hearings on the administration's proposals for revising the urban mass transportation program, it is important to make a few observations.

The administration's bill contains far-reaching, highly controversial proposals designed to reduce the overall level of spending for transit, to end the Federal Government's participation in the operating costs of our transit systems, and to significantly reduce the Federal Government's role in assuring that effective transportation services are available to handicapped persons.

I must express my disappointment at the failure of the administration to recognize the importance of effective public transportation in the life of our large and small cities. For 20 years, Congress has recognized that Federal assistance to transit is a key element in the revitalization of our cities, the protection of our environment, and the conservation of our energy resources. Successive administrations—both Democratic and Republican—have worked with us to build a program that has stopped the national decline of public transit and sparked a rebirth of good public transportation service all over the country.

This administration has broken this Federal commitment by its shortsighted proposal to simply phase out the operating assistance program which has been so important to the continued operation of many transit systems.

In the last few years, Congress has worked hard to correct the inequities and inefficiencies in the operating assistance program. I need not dwell on last year's experience where both Houses of Congress had passed a sweeping reformation of the formula program, only to have the bill die in the final hours of the Congress.

When that legislation died, we had a commitment from the distinguished subcommittee chairman that in the next Congress, he would work with us on a full review and analysis of how we could restructure the transit program. It is my sincere hope that the chairman will carry out that promise, rather than simply support the administration's proposals, so that this committee can fashion a program of Federal assistance that is highly efficient, contains incentives for improved operation, and reflects the continued importance of mass transit to the Nation's urban and energy goals.

Today's hearing will focus on regulatory issues, with special focus on the labor protection provisions of section 13(c) and the transportation for the handicapped requirements of the Department's section 504 regulations.

It continues to be my firm belief that employees of transit systems should have reasonable protection from the adverse effects that may occur where Federal grants impact a transit system. That is only fair. While it is important that protections be in place for workers under all transit grants, that concept does not mean that the administrative process involved in handling these 13(c) agree-

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ments can't be swift and efficient. This, however, appears more a matter for administrative review and less a legislative question that should concern this committee.

What is of concern to this committee is the continuing controversy about how to provide the handicapped population of this country with access to reasonable transportation services. Last year we were locked in a difficult struggle over what sort of alternative ought to be available for localities to meet their obligations under section 504 of the Rehabilitation Act and section 16 of the UMTA Act, other than the inflexible mandate of full accessibility contained in the Department's regulations. While no resolution was achieved, progress was made, with both sides recognizing the need for compromise. I was truly disappointed to find out that the administration has now backed off its earlier commitment to assure reasonably comparable service to handicapped persons, in favor of a proposal that allows total local option with no minimum standards, no Federal review, and no recourse for appeal of the local decision. In my view, the administration's proposal represents an attempt to abandon the Federal commitment to provide reasonable transportation service to handicapped persons. I believe the Congress will recognize the weakness of this proposal and continue the difficult but necessary process of finding a more reasonable alternative.

Senator LUGAR. Thank you very much.

We welcome the distinguished ranking minority member, Senator Williams from New Jersey. I am advised that we will be interrupted very shortly for a rollcall vote at which time we will recess the hearing for a few moments, and we are sorry for the inconvenience to the witnesses.

Let me commence the questioning by asking each of you gentlemen, for your interpretation of the situation when changes in Federal funding may lead to a worsening of employee conditions. Will 13(c) be used as a means of trying to maintain employee rights and privileges require payment of damages under 13(c) agreement.

First of all, Mr. Maroney, how do you interpret that 13(c) with regard to the worsening of employee conditions in the event that Federal funding led to substantial changes in the employee situations with local transit systems?

Mr. MARONEY. Well, if I understand your question, and I am not sure that I do, to tell you the truth, you're asking me if the Federal funding does or has in fact changed.

Senator LUGAR. Let me state it more clearly.

EFFECT OF PHASEOUT

The proposal of the administration is that operating subsidies should be phased out over a 3-year period of time. This would indicate that Federal funding will be substantially less, and it may mean that there will be substantial cutbacks in services or changes in local systems. How will 13(c) apply in that situation? Will 13(c) continue to apply?

Mr. MARONEY. Well, I think it will require collective bargaining in the same way that collective bargaining applied before there was Federal funding. When the public mass transit industry fell

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flat on its face, 13(c) gave us the right to continued collective bargaining.

I don't agree with what has been said here, that 13(c) affects scheduling, and I certainly don't agree with the last statements that were made by the other witnesses. I hope this committee looks into the facts that have transpired in these cases.

We sat down and negotiated contracts and we would expect to do that today. We, as a matter of fact, are doing it today, Senator.

The States, as you well know, and the cities and communities are not waiting on the budget cuts of the Reagan administration. We are now having cuts on the budget in other respects. And Boston, I think, is a shining example and does not in any way reflect the testimony given here. But we have negotiated comparable wages and working conditions within the amount of money available. It is collective bargaining. All 13(c) is continuing is collective bargaining. And obviously the people that are at this table and that I've heard testify have not been through collective bargaining, not under 13(c) or any other kind of collective bargaining. Because it is a matter, if there is a cutback, we are responsible people. We have cut back. We have already negotiated loss of the cost-of-living clauses, for example. Not arbitrated.

Certainly I wish we had the power that has been claimed over this, not only over the Labor Department, but apparently we have power over the Federal courts in San Diego we didn't know that we had. But the Federal courts ruled in that instance. But we negotiated these benefits. We have negotiated reductions, and we have also lost benefits in arbitration. Arbitrations, we have the record that we can place before you of every single contract negotiated and arbitrated since 1964, and we have been responsible in the negotiations. And obviously the people at this table never negotiated with the Amalgamated Transit Union, and in my judgment, any other union, because they certainly don't understand it. And when it is stated that in San Diego that the national 13(c) was used, I am sure that the gentleman making that statement will want to correct it because it had nothing to do with it. That 13(c) agreement was negotiated with the San Diego Transit System attorneys, and that local 13(c) agreement was what was adjudicated in the court.

We negotiated the settlements in San Diego. We negotiated after the litigation order compelling arbitration. And when it has come down to arbitration we have negotiated a contract settlement, and we will negotiate them on the decline as we have on the incline.

We recognize, as we made in our statement at the beginning, that we have a responsibility. We recognize that there is a squeeze on and we recognize inflation and we recognize the economic condition of this country and we will face it across the collective bargaining table, and that is all 13(c) gives us a right to do, in our judgment.

We have sat down and negotiated in good faith, and there is not a single management, I don't believe, responsible management in this country that will testify to the contrary. There is no management testifying to that here.

Senator LUGAR. Do other witnesses have a comment on at least this first question of the Chair, which was specifically, if transit operators are forced to reduce service due to the reduction in

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Federal funds, will local operators have to pay dismissal allowances of up to 6 years of wages because of the 13(c) agreement?

Dr. MUNDY. Mr. Chairman, if I could. Speaking perhaps on behalf of local communities, I think they would be happy to, if Mr. Maroney would agree, that they would not be responsible for any displacement cost to them as transit systems may have to decline. I doubt seriously if that is going to be the argument, though.

RESTRICTIVE MONOPOLY

I think it goes deeper than who is going to pay for displacement. It is the monopoly that goes along with those jobs that are being performed. If a community has to, because of financial crisis, cut back on services it is providing, there is a clause in the master agreement that says that any mass transportation provided in that service area will be provided by that local union. Therefore, the community is locked in to a give it all or nothing issue. They can either pay the going rate or not have any service at all to that particular route or to that particular community, unless they are doing it with the existing bargaining agreement. It tremendously restricts and tremendously makes it impossible for a local community to use employers, to use some sort of para-private transportation provider to really mix and match the kinds of services the local community needs to develop.

In essence, you are going to find many suburban communities trying to withdraw from regional transportation agreements so they can get out from under that kind of restrictive monopoly agreement they didn't quite realize they were getting into when they signed the 13(c) agreement.

Those battles are yet to come, and I think they will be severe.

Senator LUGAR. Mr. Pendleton.

Mr. PENDLETON. Thank you.

Just a small comment. I guess I've learned that you don't say how good you are by saying how bad the other fellow is or the other team is. But in specific response to your question, the word "worsen" becomes rather vague to me at this point. Through our collective bargaining arrangements we have been allowed to, over a negotiated way, to reduce the number of drivers and the numbers of hours and so forth.

What interests me is that in our decision in San Diego the word "may" in the 13(c) was interpreted by the court to mean "shall," and I guess our question would be, does the arbitration agreement that comes out of court decision take precedence over 13(c)? Then that would substantially worsen the condition of the corporation and certainly would have some impact upon where the operators are.

I guess the final point is that, at some point along these lines, budget gaps always close.

Senator LUGAR. Mr. Sood, do you have any further comment. You had some testimony on this, as I recall.

Mr. SOOD. Mr. Chairman, we in the State of Washington certainly understand the collective bargaining proposals in comporting with State law. We have a top labor negotiator involved with us in all labor negotiations.

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As a director of a transit system, although we don't get any Federal funds, if we ever run short of money, the first thing that will happen is a cutback in service. As we cut back in service, or the transit system might cut back in service, it means shorter working hours and layoffs or a need for more part-time drivers. And I think the consequences of this I have highlighted in my testimony. This is my position.

Senator LUGAR. Senator Williams, let me ask you for a round of questioning at this point. I have no idea when we will have a break. But if you would like to raise questions at this point, I would recognize you.

Senator WILLIAMS. Thank you very much, Mr. Chairman. I regret that I did not hear Mr. Maroney's opening statement and came in for the three statements that were strongly opposed to 13(c), with some rather vivid description of its application in labor-management relations.

No 1, 13(c) does provide for a maintenance of income, does it not, for those who lose jobs as a result of changes in the system that are made because of Federal funding? That is within 13(c), am I right?

As a matter of fact, that was one of the principal reasons for the creation of 13(c). There was a fear that capital money coming in, Federal money, might change the system to the point where there would be a reduction of the work force.

As it has worked out, have there been any substantial claims under 13(c) of those who have lost jobs because of Federal contribution to transit systems?

Mr. MARONEY. I think, Senator, if you are asking me, that we testified and our record indicates that overall there has been approximately $6,000 in payments involved in the overall loss of jobs. In the context in which you are asking it is minimal, very minimal.

Senator WILLIAMS. So it is de minimus, almost nonexistent, the way you said it.

Mr. MARONEY. That's right.

Senator WILLIAMS. That we take out of any consideration here. I know there are many that still fear that this is the potential great expense for those who will be retained on the benefit rolls, having lost jobs through capital contributions under the Federal program, and that is not a problem and has not been a problem.

Mr. MARONEY. Not at all.

Senator WILLIAMS. On the other side, 13(c) does provide for a continuation of the collective bargaining situation when a system goes from private into public hands, isn't that right?

Mr. MARONEY. That is correct.

Senator WILLIAMS. And that is what this is all about, all of this discussion. Are you all, except the County of Snohomish, were you addressing yourself to changed situations, from private to public? Mr. Mundy.

Dr. MUNDY. Not essentially. I was speaking of the difficulties when one goes from private to public and in that process implements a monopoly for the provision of any public transportation services in a community by the signing of a 13(c) with a clause which says that all transportation, mass transportation services, if they are to be provided, shall be provided by that local union. That severely restricts the opportunity for the community to utilize any

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Federal funds to provide other than what service that local bargaining agreement agrees to provide.

So it provides the local union with a tremendous amount of leverage in suggesting to the local community, if you want Federal funds, you're going to have to do it our way.

Senator WILLIAMS. That sort of eliminated any idea of collective bargaining, the way you just said it.

Dr. MUNDY. Well, it is not very collective, if you put it that way.

UNION DICTATION

Senator WILLIAMS. The way you put it there isn't any collective in it. There is no bargain. This is a dictate. Now, where does that exist? Give us a system that is not in a bargaining situation but in a union dictation. Just so we can get the flesh and blood, where is it? What transit authority just sits there and does everything the union says?

Dr. MUNDY. At the risk of embarrassing perhaps some managements of transit systems, I can only say it is my personal opinion and belief that that ultimately is the result in many communities.

Senator WILLIAMS. You put a new word in there, ultimately. You mean the union finally wins? But before we get to the ultimate, what happens? Are there two sides of this equation? And do they talk? Do they argue?

Dr. MUNDY. Senator Williams, if you will permit me a bit of levity, it's a little like a common dance which is performed in many communities, whereas the salaries paid to transit management are often predicated as a function or a percentage of that earned by the operating labor. So when they go into a collective bargaining agreement you end up bargaining for your own salary. That is not necessarily the best.

Senator WILLIAMS. Where does that happen?

Dr. MUNDY. I'm sorry, Senator. Do you want specific cities?

Senator WILLIAMS. Yes. So we can make a real study of this. You're telling us these broad, general things, and I would like to know whether we can examine them to see where they really are.

Dr. MUNDY. I would suggest you need to take a look at our top transit systems, starting with New York through Chicago and Baltimore, and attempt to take a look at the kind of settlements that are reached in wages and work rules as pertain to those wage rates and work rules being performed by private mass transportation providers in the same community. There is obviously a greater deal of leverage or, and this may be the case, to a greater deal of skill on the part of our organized international unions in that collective bargaining procedure.

It is obvious that you get very few managers to testify that either they are inept or cannot bargain successfully with their local union. Whether they are in a disadvantaged position or whether or not a community is in a disadvantaged position is a subjective question. It is perceived though that, given the kind of settlements that have come forth under the last two or three rounds of collective bargaining, that it is somewhat obvious, at least to me as a single researcher, that by far the power rests with transit unions in this case.

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And I am concerned that they have been so successful that they have pushed the labor wage rate so high that a local community will have a hard time trying to pay for it.

If you pardon me, another bit of levity, we are in public service in the universities, but would almost loved to have had the kind of representation and benefits, perhaps, and the record that they have been able to do for their brotherhood.

Senator WILLIAMS. Well, I guess we could always make a check on this by looking at the increases in transit labor in terms of inflation and comparability with other parts of industry. Where do you stand with other industry in terms of the workers?

Mr. MARONEY. I think we have a recent study, I believe, that answers that question, and I would just call it to your attention for the record.

Mr. PUTNAM. Senator, we quoted in our testimony an excerpt from the House Appropriations Committee hearings for fiscal year 1981. During the course of the UMTA testimony there was printed in the record of that hearing an OMB report on the Section 5 program in which, as our testimony shows, the OMB's findings were that transit workers were paid comparable wages to other public employees in those cities and towns, cities where the transit systems were located, and that their rate of increase was comparable to those received by other public employees. And this was, of course, for a period prior to the date of that study, but it would appear that the same facts would be true today, that there has been no change in that phenomenon.

Senator WILLIAMS. I don't have any further questions, Mr. Chairman.

Mr. PENDELTON. Senator, if I may. In San Diego, we're not considered by the NLRB to be a public corporation. We are a private company.

DELAYS OF APPROVAL

I just wanted to say that we treat 13(c) and collective bargaining a little differently, but they are separate items. What we have some problems with is that in the process of 13(c) approval, some of the things that are requested, and the delays in that process, do have an impact upon that which has already been collectively bargained.

We have—the grant applications would come after we have had a collective bargaining agreement, and that causes us some difficulty. We make no claim that 13(c) has an impact upon the wage rate at all, that that makes the wages go up.

But we have some difficulty in between the labor agreements, with those things that come up under 13(c). The delays in that process, for other kinds of working conditions, do cause a problem.

Mr. MARONEY. Mr. Chairman, I think the GAO report will show you—and we would challenge anyone to show—that there has been a delay in the approval between the Department of Labor and the unions. It clearly indicates—and of course they give other reasons as to why it was delayed within the Department, and between the Department of Transportation and the Department of Labor; but there has been no delays—there have been some disputes, a very few cases where there was a delay.

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But there has been absolutely no delay between the labor union itself and approving such grants, as has just been mentioned, in the San Diego case—or any other case, for that matter—that can be laid at our doorstep.

Senator LUGAR. Thank you very much. The Chair and Senator Williams want to thank each one of you for coming today. This is a subject that it would be useful for us to explore at some further time, and I'm certain that there are further questions that you would wish to ask of each other, as well as those we might want to ask of you.

I think we have had excellent testimony. I am hopeful that each of you will avail yourselves of the opportunity that most of you have asked for: to make further comments on comments that have already been made. And I think that the record that will be built from this hearing, both this afternoon and subsequently, will be very informative for all Senators and members of the public who are deeply interested in the 13(c) question.

Thank you very much for coming.

[It was requested that the following presentation appear in the record:]

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SUPPLEMENTAL COMMENTS
OF AMALGAMATED TRANSIT UNION
UPON TESTIMONY OF OTHER WITNESSES
CONCERNING SECTION 13(c) ISSUES

Various witnesses during the Senate Subcommittee Hearings testified as to the impact of Section 13(c) of the Urban Mass Transportation Act on transit services and whether existing legislation should be modified. In accordance with Subcommittee Chairman Lugar's direction that the record be left open to receive additional comments from all witnesses on Section 13(c) issues, the Amalgamated Transit Union has prepared the following Supplemental Statement for inclusion in the record of the Committee Hearings. These comments relate to the testimony of particular witnesses as hereinafter set forth.

1. Administration Witnesses.

In response to oral testimony of Administration witnesses that the federal operating assistance program under Section 5 has unduly inflated transit labor costs, we would refer the Committee to the contrary conclusions rendered by a recent Urban Mass Transportation Administration Study commissioned by the Office of Management and Budget (OMB), dated December 1979, entitled "Operating Assistance for Transit, and Evaluation of the Section 5 Program," which appears in Part 4 of House Appropriations Subcommittee Hearings on the Department of Transportation and Related Agencies' Appropriations for 1981 at pp. 944-1004. This study includes the following relevant conclusions and comments concerning transit wages and labor costs:

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"The major causes of increased operating shortfalls appear to have been on the cost side of the equation. Of the factors contributing to transit cost increases from 1973 to 1978, inflation has been dominant, accounting for over 60% of the increase. Other factors include service expansions, rising fuel prices, employee fringe benefits and additonal employees. Wages and wage increases in the transit sector, which amount to 75% of operating expenses, are comparable with those of other public employees (teachers, police, electric power workers) in cities of the same size." (Hearings, p. 948; Study, p.5)

"According to a Census of Governments survey (1978), transit employees have the second highest average monthly earnings of any public employees ($1,343 in 1977). When examining the relatively high salaries of transit employees, it is important to compare transit employees' earnings with those of their reference group: either municipal or special district employees in the locality. Over three-quarters of transit employees work in cities of over one million population. Within this city-size group, transit employees earned $1,392 per month, ranking fifth behind policemen, firemen, electric power workers and teachers. In cities of 500,000-one million population, they earned $1,407 per month, ranking second behind teachers. In smaller cities they rank from fourth to seventh earning between $896 and $1,151 per month. The high average reflects the fact that a disproportionate share of the nation's transit employees work in the larger and more expensive cities and receive commensurate pay.

"In arriving at their present salary level, transit employees have received pay increases averaging 5.8% annually from 1973 through 1977. This figure compares with increases received by teachers (5.2%), firemen (7.66%), policemen (6.48%), and electric power workers (7.08%) over the same period. It is clear that percentage wage increases for transit employees are in line with those of their reference group." (Hearings, p. 976; Study, p. 32)

"In light of the previous analysis, the following conclusions can be made:

CONCLUSIONS

(a) The principal factors that have affected transit operating costs are inflation, service expansions, wage increases, additional employees, and increases in the cost of diesel fuel.

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(b) Labor costs account for 70 to 80 percent of total costs. Wages and fringe benefits increased 13.5% in real terms between 1973 and 1978.

(c) Transit employee salaries and their rate of increase are comparable to those of other public sector employees who work in cities of the same size." (Hearings, p. 977; Study, p. 33)

2. APTA Witness

A. In response to the written testimony of APTA witness Leonard Ronis, which proposes streamlining of the 13(c) process by a "negative declaration" procedure, we would refer the Committee to a five-page "Memorandum of Law" on this subject, issued by the Solicitor for the Department of Labor in June of 1976, which concludes that the negative declaration procedure neither fulfills the statutory mandate, nor would it simplify 13(c) procedures. A copy of this Memorandum of Law is attached hereto as Exhibit A.

B. In response to the Ronis testimony that Section 13(c) should not be interpreted and applied to abrogate state labor laws and that the Department of Labor should not require locally negotiated 13(c) arrangements that conflict with state law, we would refer the Committee to the most recent Court of Appeals decision discussing the conflict issue, wherein the Court stated that Section 13(c) "reflects national labor policy" and that "to qualify for federal funds, municipalities must, one way or another, undertake to protect the collective bargaining rights required by national labor policy." Local Division 1285, Amalgamated Transit Union v. Jackson Transit Authority, No. 78-1185. (6th Cir., June 3, 1981) (Exhibit B).

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3. NACO Witness

In response to the written testimony of NACO witness William Oliver that the 13(c) requirement has served as a stumbling block to state and local participation in the small urban and rural public transportation program authorized by Section 18 of the Act, we would refer the Committee to the following information supplied by the U.S. Department of Labor, Division of Employee Protections:

A. A total of 851 Section 18 Projects have received Department of Labor 13(c) certification for the period through December 31, 1980. (Exhibit C)

B. A total of 1,047 such projects was certified through April 30, 1981. (Exhibit D)

C. Forty-five states have signed on to the special 13(c) warranty applicable to the Section 18 program as of April 30, 1981. (Exhibit E)

D. The average Department of Labor processing time for Section 18 projects from date of receipt to date of 13(c) certification for the first seven months of fiscal year 1981 was 8 days.

It would appear from a recent study by JWK International Corp. for the FHWA, dated May 14, 1981, entitled "An Evaluation of the 13(c) Warranty and Waiver for the Section 18 Program," Contract No. DTFH 61-80-C-00152, that (1) most of the initial problems with the 13(c) requirement as applied to the Section 18 program were due primarily to a lack of understanding at the state and local

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levels; (2) that acceptance of the special warranty developed by the Department of Labor and Department of Transportation as the basis of 13(c) certification now extends to virtually all states; and that (3) the amount of time and paperwork required to obtain 13(c) certification of Section 18 projects, compared with other Section 18 requirements, has been minimal, following initial state acceptance of the warranty. This study further concluded that "the warranty, once accepted by the states, caused little additional paperwork and no processing delays by state and FHWA administrators" (p. 99); that the 13(c) warranty "had little impact" on the Section 18 program; and that the "major accomplishment of this warranty is the establishment of a framework by which employees can be protected" (p. 101).

4. Snohomish County, Washington

In reply to the testimony of the witness from the Snohomish County, Washington, Public Transit Benefit Area Corporation (SCPTBAC), Mr. Sood, we would call the Committee's attention to correspondence between Senator Gorton, the Department of Labor, and the SCPTBAC (Exhibits F and G) showing that Snohomish County voluntarily chose to forego federal funding rather than seek a Department of Labor determination of the applicable labor protective requirements. As the Department of Labor letter dated February 3, 1981, states:

> "Although a tentative employee protection agreement was reached by negotiators for the Corporation and the Amalgamated Transit Union, representing its employees, that agreement was not approved by the Corporation's Board of Directors. SCPTBAC subsequently withdrew its application before additional action was taken to try to finalize employee protections for certification on our part.

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> We remain willing to discuss any issues and assist the SCPTBAC in any way possible in order to enable it to develop arrangements which meet the statutory protection requirements of the Act.*** If negotiations break down or irreconcilable issues are present, the Department of Labor will incorporate into the time scheduled for negotiations, dates by which the Secretary will take alternative action, including action to establish the protective terms and conditions."

As matters now stand with Snohomish County, the Corporation's transit system is one of the very few public bodies in the entire country and, in fact, the only one in the State of Washington, which has rejected federal funding. The Corporation's fundamental objections to the statutory requirements cannot be considered representative of those of other public bodies and transit systems throughout the country, which have almost universally experienced next to no costs and inconvenience attributable to meeting Section 13(c) requirements.

5. University of Tennessee Witness

The only response we can make to the testimony of Dr. Ray A. Mundy, PhD, of the University of Tennessee, is to note, as did Senator Williams, that his broad charges against 13(c) reduce to an assertion that transit managements are inept, and fundamentally incompetent to represent their own interests effectively in the Section 13(c) and collective bargaining process. In the absence of documentation and other factual material supporting Dr. Mundy's sweeping generalizations that transit unions dictate to transit managements, using the leverage of 13(c), we submit that his testimony should be given no weight by this Committee. Dr. Mundy was either unable or unwilling to supply any specific facts in support of his assertions, despite Senator Williams' request that he do so.

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6. San Diego Transit Corporation Witness

A. The testimony of the San Diego Transit Corporation witness Clarence Pendleton, purporting to describe the Corporation's unhappy experiences with Section 13(c), totally misrepresents the role of the Department of Labor in the Section 13(c) process. Far from abdicating to the unions its statutory functions, the Department has promulgated general procedural regulations governing the 13(c) bargaining process (29 CFR Chapter II, Part 215) and has actively mediated and otherwise supervised the process in accordance with its guidelines. Whenever required by the disputes of the parties in particular cases, it has rendered the determinations required by law as to the levels of protections deemed appropriate and necessary. Mr. Pendleton's assertion that the Department of Labor "has permitted unions to effectively gain additional rights and benefits" "far beyond what was intended" demonstrates both a misunderstanding of the legislative purpose and of the determinations rendered by the Department, including those relating to the continuation of collective bargaining rights and the 5(2)(f) Interstate Commerce Act protections. In the latter instance, it was the Department of Labor and not the unions which established the so-called Amtrak conditions under 5(2)(f), which today apply throughout the Section 13(c) program. The Amtrak protective arrangement was imposed by determination of the Secretary of Labor on April 16, 1971, after protracted negotiations between the nation's railroads and railroad brotherhoods failed

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to result in an agreement upon employee protective conditions which would apply to railroad employees affected by Amtrak's takeover of private rail services.

B. Contrary to Mr. Pendleton's testimony, the San Diego Transit Corporation's initial protective agreement with the Amalgamated Transit Union, dated March 1, 1967, did include an interest arbitration requirement almost identical in terms to the one enforced by the Federal District Court. See Division 1309, ATU v. San Diego Transit Corp., No. 78-1093-E(S.D.Cal). (Exhibit H) Also, contrary to Mr. Pendleton's testimony, the San Diego Transit Corporation had no obligation under the statute to accept the National Operating 13(c) Agreement as a basis for certification of operating assistance grants, and a number of systems have, in fact, chosen to use alternative arrangements for such grants. See Department of Labor letter to Senator Gorton (Exhibit G, supra).

C. The Transit Corporation's characterization of the 1978-79 collective bargaining history is misleading, in the extreme, as it relates to Section 13(c). The union merely enforced by court action its collective bargaining and arbitration rights, as previously agreed to by both parties, in their 13(c) agreements. See Exhibit H, supra.

D. The Transit Corporation's complaint about delays in the processing of a recent grant application ignores the legitimate concerns of the union that without an explicit and detailed successor clause in the 13(c) agreement, the City of San Diego

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and its Transit Corporation might succeed in an apparent deliberate attempt to transfer service to another operator and thereby circumvent their pre-existing 13(c) obligations, including preservation of existing rights and interests. The project was ultimately certified by the Department of Labor on the basis of an agreement that these rights and interests would continue to be applicable to any operator of the transit system.

E. The recommendations of the Transit Corporation that 13(c) not be applied to Section 5 grants, that UMTA be delegated with authority to use a negative declaration process on all grants, and that the law not be allowed to interfere with local bargaining or to force interest arbitration all have been dealt with above in regard to the testimony of other witnesses. It is submitted that in each case these proposals would constitute an emasculation of the protective requirements and would effectively breach a compact that the original framers of the Act made with the workers in the industry that "federal funds should not be used in a manner that is directly or indirectly detrimental to legitimate interests and rights of such workers." U.S. Code of Cong. and Adm. News, 1964, V 2 at p. 2584.

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U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210

MEMORANDUM OF LAW

EXH. NO. A

SUBJECT: Department of Transportation's Proposal that the Secretary of Labor provide a "Negative Declaration" in lieu of existing certification procedures for certain project categories.
SOL: 76-22-(UMT)

The Department of Transportation has proposed that the Secretary of Labor, in processing grant applications involving certain categories of projects under sections 3, 5 and 6 of the Act, which have in the past resulted in minimal if any adverse impact on mass transit employees, need not require that specific terms and conditions of a protective arrangement be worked out to certify that fair and equitable arrangements have been made to protect the interests of employees.

It is the position of the Department of Labor that the Department of Transportation's proposal concerning negative declarations, would prohibit the Secretary of Labor from performing his role as mandated by Congress.

Section 13(c) of the Act provides that "It shall be a condition of any assistance under section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. . . . The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements." (Emphasis added.)

Congress in passing the Urban Mass Transportation Act was aware that the future of the mass transit industry was in jeopardy without federal assistance. Further, in contemplating the impact of the Urban Mass Transportation Act Congress believed that the bill would serve to preserve the jobs of many workers then engaged in the mass transit industry, and more importantly Congress envisioned that this bill would in the long range generate new jobs through the extension of existing systems and the creation of new systems. While recognizing the vast potential for improvement in employment

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prospects as a result of this bill, Congress was also aware of the potential adverse effects on employees as a result of this bill.

> Although the problem of worker protection may arise in only a limited number of cases, the committee nevertheless believes that the overall impact of the bill should not be permitted to obscure the fact that in certain communities individual workers or groups of workers may be adversely affected as a result of the introduction of new equipment or the reorganization of existing transit operation. (2 U.S. Cong. & Adm. News, 1964, H. Rep. 204, p. 2584.)

Because of this concern, Congress sought to ensure that individual workers adversely affected should be fully protected in a fair and equitable manner and that federal funds would not be used in a manner that is directly or indirectly detrimental to the legitimate interests and rights of workers. Congress intended the means for providing these protections would be worked out through the local bargaining process.

> The committee wishes to point out that subject to the basic standards set forth in the bill, specific conditions for worker protection will normally be the product of local bargaining and negotiating. (2 U.S. Cong. & Adm. News, 1964, H. Rep. 204, p. 25864.)

Further, the committee went on to stress the role of the Secretary of Labor in assuring that the intent of Congress be carried out.

> The committee also expects the Secretary of Labor, in addition to providing the administrator with technical assistance, will assume responsibility for developing criteria as to the types of provisions that may be considered necessary to ensure that worker interests are adequately protected in the different types of situations that may arise. (2 U.S. Cong. & Adm. News, p. 2584-2585.)

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It is evident that Congress wished the Secretary of Labor to assume responsibility for determining that employees are provided fair and equitable protection.

In 1966, when the Act was first amended, Congress again reiterated its commitment to providing employee protections. Both the Senate and House Committee reports specifically stated:

> Before Federal assistance may be provided, the Secretary must determine that all contracts contain the usual provisions relating to * * * labor * * * under criteria specified in the Act * * *. (See Cong. Rec., October 20, 1966, p. 28345, 89th Cong., 2d Sess.)

Further, in a memorandum, inserted into the Congressional Record, explaining the technical changes made by the Urban Mass Transportation Act amendments of 1966 it was stated:

> The labor protective provisions contained in the original Urban Mass Transportation Act continue to apply in the case of any project which can conceivably affect the rights and interests of employees. (supra, at p. 28345.)

The Act was amended again in 1974 to authorize grants for operating subsidies to states and local public bodies and their agencies. There was no discussion by Congress to amend or eliminate the need for 13(c) protections for loans under section 3. In addition, a new section 5 was added to the Mass Transportation Act which now provides for the apportionment of funds on a formula basis. Congress specifically provided in section 5: "(n)(1) that the provisions of section 13(c) and section 3(e)(4) shall apply in carrying out mass transportation projects under this section."

Therefore, it is perfectly clear from its passage and through the amendments of 1973, Congress was committed to providing mass transit employees the protections of section 13(c). If the Secretary of Labor were to adopt the proposal put forth by the Department of Transportation the burden of proof would shift to the individual employee to rebut the Secretary's "Negative Declaration" of adverse impact in order to qualify for the statutory protections. This was obviously not what Congress intended in establishing protections

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for those employees who were adversely affected as a result of the federal grant.

Moreover, section 13(c) specifically provides that protective arrangements under the Urban Mass Transportation Act shall provide benefits no less than those established pursuant to section 5(2)(f) of the Interstate Commerce Act (29 U.S.C. 5(2)(f)). The United States Supreme Court, in Norfolk and Western Railway Co. v. Nemitz, et al. (92 S.Ct. 185 (1971)) a decision concerning the application of section 5(2)(f) stated as follows:

> We reviewed the history of §5(2)(f) in Railway Executives Assn. v. United States, 339 U.S. 142, and said that 'one of its principal purposes was to provide mandatory protection for the interests of employees affected by railroad consolidations.' Id., at 148. That 'mandatory protection' can be accorded by terms provided by the Commission, or, as is more likely, by provisions of a collective agreement which the Commission adopts or approves as adequate for a minimum of four years (as required by the second sentence) or longer (as allowed by the first sentence) if the Commision so provides. (supra, at p. 188.)

The Supreme Court clearly interpreted section 5(2)(f) as requiring the development of the terms and conditions of arrangements intended for employee protection. Section 13(c) requires that employees be afforded no less.

Further, as a practical matter, the proposal as suggested by the Department of Transportation, creates more problems than it cures. The proposal appears to envision a procedure by which certain types of projects would be categorized as presumed to result in minimal, if any, adverse impact on mass transportation employees. Accordingly, when a grant application in one of these specified categories, is presented to the Department of Labor the Secretary would simply make a departmental declaration that no adverse impact is likely to occur and therefore no specific 13(c) arrangement need be negotiated.

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However, the Department of Transportation has not specified how these categories are to be established. Proposed projects under section 5 are of such a broad nature and involve such large sums of money that it would appear to be impossible, absent a crystal ball, for the Secretary of Labor to say these projects could not conceivably have an adverse impact on transit employees.

It would appear that the Department of Transportation is proposing that the Secretary of Labor rely solely on an applicant's assurance that the envisioned project would not impact adversely upon mass transit employees in the area. Such a proposal flies directly in the face of the congressional intent that the Secretary of Labor use his expertise and the auspices of his office to ensure employee protections.

If the proposal, as suggested, were adopted the Secretary of Labor would have no way of confirming or refuting the applicants' assurances based on information supplied by the applicant. Such decisions, made in a one-sided vacuum, do not begin to fulfill the responsibility placed on the Secretary of Labor by Congress. Therefore, new procedures would necessarily have to be devised by which the Secretary could obtain sufficient information about a particular project before considering the question of who may be adversely affected by the project.

Under existing procedures the employee has the burden of showing that his position has been adversely affected. The burden of proof then shifts to the applicant to show that the adverse impact was not a result of the federal grant.

The DOT proposal would shift the total burden onto the employee although the applicant would be in a far better position to trace the use of the federal funds. Therefore the employee would be faced with the virtually impossible task of rebutting the Secretary's Negative Declaration.

Accordingly, the proposal as suggested by the Department of Transportation neither fulfills the statutory mandate of the Act, to provide fair and equitable protections for mass transit employees, nor would it simplify procedures as intended.

William J. Kilberg
Solicitor of Labor

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ATU EXH. NO. 5

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No. 78-1185

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

LOCAL DIVISION 1285, AMALGAMATED TRANSIT UNION, AFL/CIO/CLC, *Plaintiff-Appellant,* v. JACKSON TRANSIT AUTHORITY and the CITY OF JACKSON; WILLIAM T. COLEMAN, JR. and WILLIAM J. USERY, in their official capacities, *Defendants-Appellees.*	APPEAL from the United States District Court for the Western District of Tennessee.

Decided and Filed June 3, 1981.

Before: MERRITT, KENNEDY, and MARTIN, Circuit Judges.

MARTIN, Circuit Judge, delivered the opinion of the Court, in which KENNEDY, Circuit Judge, joined. MERRITT, Circuit Judge, (pp. 18-20) filed a separate dissenting opinion.

MARTIN, Circuit Judge, This appeal requires us to decide whether Section 13(c) of the Urban Mass Transportation Act, 49 U.S.C. § 1601 *et seq.*, ("UMTA"), creates a private federal cause of action for employees of local transit authorities which have received federal funds under the Act. We must also determine whether either the Secretary of Labor or the Secretary of Transportation has a statutory duty to enforce the terms of a "labor protective arrangement" exe-

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cuted pursuant to Section 13(c) of the Act. 49 U.S.C. § 1609 (c).

In 1966, the City of Jackson, Tennessee applied for a federal grant to facilitate conversion of a failing private bus company into a public transit authority. As a condition of federal funding, Section 13(c) requires grant recipients to make "arrangements" for the protection of their employees' interests:

> It shall be a condition of any assistance under section 1602 of this title that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of this title. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

In order to qualify for a grant, Jackson Transit Authority entered into a "Section 13(c) agreement" with Local Division 1285, Amalgamated Transit Union, the collective bargaining agent for the transit employees. That agreement was duly submitted to the Secretary of Labor, who certified that it met

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the "fair and equitable" standard of Section 13(c). In accordance with Section 13(c)(5), the substance of this "arrangement" was incorporated in the grant contract between Jackson and the United States.

From 1966 until 1975, Jackson and the Union negotiated and honored a series of collective bargaining agreements. In 1975, however, Jackson allegedly repudiated its current collective bargaining contract and unilaterally reduced certain employee benefits. The Union, through its International president, sought determinations by the Secretaries of Labor and Transportation that Jackson had breached its obligation under Section 13(c) to continue collective bargaining. Both Secretaries refused to issue such a finding, whereupon the Union initiated this action.

In its complaint, the Union sought: 1) monetary and injunctive relief against Jackson; and 2) mandamus relief against the Secretaries. Jackson moved for dismissal on jurisdictional grounds; the Secretaries also moved for dismissal, or in the alternative, for summary judgment.

The District Court heard oral argument on the defendants' motions. On December 22, 1977, the court issued an order and memorandum opinion dismissing the complaint for lack of federal jurisdiction. That decision is reported at 447 F. Supp. 88.

On appeal, the Union argues that the court should have exercised jurisdiction over the controversy and inferred a private federal right of action against the transit authority from Section 13(c) of the Act. We agree. We reject, however, the Union's further claim for relief in the nature of mandamus against the Secretaries of Labor and Transportation.

I. The Complaint against Jackson.

A. Federal Jurisdiction.

The District Court dismissed the case for lack of federal jurisdiction. We disagree both with the court's analysis and

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its conclusion. The opinion below proceeds on the assumption that subject matter jurisdiction under 28 U.S.C. § 1331 is contingent upon the availability of a private federal remedy under Section 13(c). That approach is inconsistent with the analysis required by the Supreme Court in *Bell* v. *Hood*, 327 U.S. 678 (1946).

Bell v. *Hood* emphasized the distinction between the threshold ascertainment of "arising under" jurisdiction and the question whether the plaintiff in a given case has stated a claim upon which relief can be granted:

> Jurisdiction, therefore, is not defeated . . . by the possibility that the averments (of the complaint) might fail to state a cause of action upon which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action upon which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy. 327 U.S. at 682.

Our first determination, therefore, must be whether the Union's claim "arises under" the laws of the United States within the meaning of Section 1331. If it does, then federal jurisdiction obtains unless the claim is "immaterial," or "wholly insubstantial and frivolous," made "solely for the purpose of obtaining jurisdiction," *Id.* at 682. Section 1331 also requires a minimum amount in controversy of $10,000.00.

It is axiomatic that for purposes of federal jurisdiction an "action" is defined in terms of the *right asserted*, not the remedy sought. *Cohens* v. *Virginia*, 6 Wheat. 264, 379 (1821). Furthermore, the federal right asserted must be an *essential* element of the plaintiff's cause of action. *Gully* v. *First National Bank*, 299 U.S. 109, 112 (1936); *Phillips Petroleum Co.* v. *Texaco, Inc.*, 415 U.S. 125, 127 (1974).

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In the instant case, the Union contends that Jackson, by disavowing an existing collective bargaining contract and by taking subsequent unilateral actions, has jeopardized a right guaranteed to transit employees by a federal statute.

Jackson, on the other hand, emphasizes the "private" nature of the Section 13(c) contract and advances the District Court's conclusion that the Union's complaint is "essentially a state breach of contract claim." In support of this position it cites *McFaddin Express, Inc.* v. *Adley Corp.*, 346 F.2d 424 (1965), in which the Second Circuit declared itself without jurisdiction to enforce a temporary management contract between two regulated interstate carriers. The plaintiff in *McFaddin* brought an action in federal court for breach of that contract, relying for jurisdiction on an Interstate Commerce Commission order which "authorized" one carrier to manage the other for a period of six months. The court based its finding of no jurisdiction on: 1) the permissive rather than mandatory nature of the I.C.C. order; and 2) the absence of any "national interest" in the contract such that "federal principles (would) control the disposition of the case." However, we will demonstrate that neither ground of the *McFaddin* holding applies here.

Jackson's assertion that the United States is not a party to the Section 13(c) agreement is correct but irrelevant; the decisive factor is that the agreement is so intertwined with the federal statutory scheme that the rights it secures cannot be dismissed as "merely private." Not only does the statute require applicants to execute labor protective arrangements, but it also specifies a number of provisions those arrangements must include. One such mandatory provision is a guarantee than transit employees will enjoy continued collective bargaining rights after their private employer becomes a public authority. Moreover, the relationship of the Section 13(c) agreement with the federal scheme does not end with the negotiations of an "arrangement" between two private parties. On the contrary, Section 13(c) specifically

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states that no federal funds will be made available until the Secretary of Labor certifies that the agreement is "fair and equitable." Furthermore, the terms of the Section 13(c) agreement must appear in the grant contract between the United States and the grant recipient.

Thus, in contrast to the contract in *McFaddin*, the Section 13(c) agreement is a mandatory means of preserving rights created by a federal statute. That Congress chose a "private" arrangement as the vehicle for protecting transit employees does not negate the fundamentally "federal" character of the rights it perpetuates. Inasmuch as the "right asserted" in this case derives from a federal statute, we can only conclude that the Union's claim "arises under" the laws of the United States. Similarly, this action is neither "insubstantial" nor "frivolous" within the meaning of *Bell* v. *Hood, supra.*

Because Jackson does not suggest that the Union's claim involves less than $10,000.00, we shall deal summarily with the question of the amount in controversy. The Union plainly meets the standard established in *Saint Paul Mercury Indemnity Co.* v. *Red Cab Co.*, 303 U.S. 283, 288 (1938):

> [U]nless the law gives a differnet rule, the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.

In light of these determinations, we hold that the District Court erred in dismissing this case for lack of federal jurisdiction. Our conclusion finds support in three Circuit Court decisions in actions nearly identical to this one. *Local Division No. 714* v. *Greater Portland Transit District*, 589 F.2d 1 (1st Cir. 1978); *Local Division 519, Amalgamated Transit Union* v. *LaCrosse Municipal Transit Utility*, 585 F.2d 1340 (7th Cir. 1978); *Division 1287, Amalgamated Transit Union* v. *Kansas City Area Transportation Authority*, 582 F.2d 444 (8th Cir. 1978), *cert. denied*, 99 S.Ct. 872 (1979). Each of

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those cases dealt with alleged breaches of Section 13(c) agreements by grant recipients. In each instance, the Court of Appeals upheld federal jurisdiction. We can discern only one significant distinction between these cases and the dispute before us. To the extent that this distinction has any effect at all, it strengthens the argument in favor of federal jurisdiction here. In every previous case, the plaintiff Union sought federal court enforcement of interest arbitration provisions contained in a Section 13(c) agreement. Unlike continued collective bargaining rights, interest arbitration is not explicitly required by the statute. Thus, for the other courts, whether or not the right to interest arbitration "arose under" federal law was a closer question that is our analogous inquiry into the source of continued collective bargaining rights.

International Assoc. of Machinists v. *Central Airlines, Inc.*, 372 U.S. 682 (1963), a leading Supreme Court case on federal question jurisdiction, lends further support to our conclusion. *Central Airlines* arose from Section 204 of the Railway Labor Act, 45 U.S.C. § 184, which requires airlines and their employees' unions to establish, by private contract, airline boards of adjustment. The board of adjustment to which Central Airlines was subject was empowered by the contracting parties to resolve certain labor disputes and to make final and binding awards. Central refused to comply with one such award and the employees' union sought enforcement in federal court. The Supreme Court held that the action to enforce the award "arose under" federal law and gave rise to federal question jurisdiction:

> The contracts and the adjustment boards for which they provide are creations of federal law and bound to the statute and its policy. If any provision contained in a § 204 contract is enforceable, it is because of congressional sanction: "[T]he federal statute is the source of the power and authority. . . . The enactment of the federal statute . . . is the governmental action . . . though it takes a private agreement to invoke the federal sanc-

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> tion . . . A union agreement made pursuant to the Railway Labor Act has, therefore, the imprimatur of the federal law upon it . . . That is, the § 204 contract, like the Labor Management Relations Act § 301 contract, is a federal contract and is therefore governed and enforceable by federal law, in the federal courts. 327 U.S. at 692. (citation omitted.)

Jackson attempts to distinguish *Central Airlines* by noting that the Supreme Court's decision was informed by the "national interest" in preserving stable labor relations in the airline industry. That argument, however, does little to advance Jackson's cause. First, the legislative history of UMTA reveals a similar policy behind the enactment of Section 13 (c). *See* 109 *Cong. Rec.* 5670. Second, as Judge Doyle stated: the "purpose (of the Railway Labor Act) in no way controls the explicit and limited decision regarding federal subject matter jurisdiction." *Local Division 519* v. *LaCrosse Municipal Trans., supra,* at 807.

B. The Implied Cause of Action.

We turn now to discuss whether the Union has a private federal remedy under Section 13(c). The statute itself is silent on the question. We must therefore decide whether such a remedy arises by implication.

The Seventh Circuit had no difficulty resolving this issue:

> We agree with Judge Doyle's statement: "Congress intended that the contracts embodying the 'fair and equitable arrangements' were to be enforceable contracts. It would be fatuous to suggest otherwise. Because the contracts were to be enforceable, it follows that they were to be enforced at the instance of the parties to the contracts." 445 F.Supp. at 811.
>
> Based upon this premise, it follows that since the test for federal question jurisdiction has been met the remedy

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> lies in federal court. The statutory scheme outlined in the Urban Mass Transportation Act and the policy underlying § 13(c) of the Act implies a federal private remedy. Support for this holding is found in *Central Airlines*. There the Court implicitly recognized the existence of a federal private remedy. 585 F.2d at 1349-50.

The court went on to state that an analysis under *Cort* v. *Ash*, 422 U.S. 66 (1975) is "unnecesary." *Id.* at 1350.

Whether necessary or not to this decision, an inquiry similar to that in *Cort* reinforces our conclusion that this action is properly in federal court. *See Chartwell Communications Group* v. *Westbrook*, No. 80-1566 (6th Cir. filed December 29, 1980); *Curran, et al* v. *Merrill Lynch, Pierce, Fenner and Smith*, 662 F.2d 216 (6th Cir. 1980). *Cort* identified four characteristics of an implied cause of action:

> First, is the plaintiff "one of the class for whose *especial* benefit the statute was enacted," *Texas & Pacific R. Co.* v. *Rigsby*, 241 U.S. 33, 39 (1916) (emphasis supplied) – that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? See, *e.g.*, *National Railroad Passenger Corp.* v. *National Assn. of Railroad Passengers*, 414 U.S. 453, 458, 460 (1974) (Amtrak). Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? See, *e.g.*, *Amtrak, supra; Securities Investor Protection Corp.* v. *Barbour*, 421 U.S. 412, 423 (1975); *Calhoon* v. *Harvey*, 379 U.S. 134 (1964). And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law? See *Wheeldin* v. *Wheeler*, 373 U.S. 647, 652 (1963); cf. *J. I. Case Co.* v. *Borak*, 377 U.S. 426, 434 (1964); *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 394-395 (1971); *id.*,

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> at 400 (Harlan, J., concurring in judgment). 422 U.S. at 78.

Of these four factors, legislative intent is the most significant. *Touche Ross* v. *Redington*, 442 U.S. 560 (1979); *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U.S. 11, 62 L.Ed.2d 146 (1979); *Taylor* v. *Brighton Corp.*, 616 F.2d 256 (6th Cir. 1980).

Section 13(c) clearly satisfies the first *Cort* test. That provision was enacted for the "especial" benefit of transit employees and, as we have already held, creates federal rights on their behalves.

The Union's argument is further substantiated when we apply the second and third *Cort* criteria — legislative intent, "explicit or implicit," and consistency with the overall statutory scheme. The legislative history of Section 13(c) is simply not explicit. Our review of the Congressional debates establishes that the precise means of enforcing Section 13(c) agreements was not discussed. However, as Judge Doyle remarked:

> Of course, the best key to construction of § 13(c), so obvious in my view as to be dispositive of the issue, is that § 13(c) clearly contemplates contracts as the vehicles embodying the "fair and equitable" arrangements;" that contracts are meant to be enforceable, not unenforceable; and that enforceability means the existence of some remedy in some forum. 445 F.Supp. at 817.

The Act offers no administrative solution to the problem of enforcing Section 13(c) agreements. By contrast, the implementation of certain other provisions of the statute is specifically delegated to the Department of Transportation. Unless we impute to the Secretary of Transportation the responsibility for handling labor relations disputes — an incongruous result which we decline to reach without a clear Congressional directive — we are left, if only by default, with an

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implied private cause of action. *See Lloyd* v. *Regional Transportation Authority*, 548 F.2d 1277 (7th Cir. 1977). We do note, however, that if the Act had provided any administrative mechanism under Section 13(c), our resolution of this issue might have been altogether different. *Transamerica Mortgage Advisors, Inc.* v. *Lewis, supra; Taylor* v. *Brighton Corp., supra; Bradford School Bus Transit, Inc.* v. *Chicago Transit Authority*, 537 F.2d 943 (7th Cir. 1976).

The only question remaining is whether proceedings to enforce Section 13(c) agreements must be relegated to state court, as the District Judge held, or whether Congress intended to permit plaintiffs to sue in federal court. Jackson invokes the fourth *Cort* test, asserting that municipal employee labor relations are "traditionally" the province of state law.

In this context, it is important to remember that Jackson's transit employees were covered by the National Labor Relations Act while the employer was a private bus company. When, however, the employer became a municipal agency, N.L.R.A. coverage ended. 29 U.S.C. § 152(2). Congress was well aware of the potential problems this transition could create, and enacted Section 13(c) to ensure that federal funds would not be used to deprive transit employees of certain benefits they had long enjoyed:

> The principle of protecting workers affected as a result of adjustments in an industry carried out under the aegis of Federal law is not new, particularly in the transportation industry. Thus, railroad employees for years have enjoyed Federal protection against adverse effects attendant upon railroad consolidations. The problems of worker protection presented by the bill are not necessarily identical to those presented under other laws. The committee believes, however, that workers for whom a standard of benefits has already been established under other laws should receive equally favorable treatment under the proposed new program. The committee also

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> believes that all workers adversely affected by adjustments under the bill should be fully protected in a fair and equitable manner, and that Federal funds should not be used in a manner that is directly or indirectly detrimental to legitimate interests and rights of such workers. U.S. Code of Congressional and Administrative News 1964, Vol. 2 at 2584.

It is indisputable that Section 13(c) reflects *national* labor policy. *See* 109 *Cong. Rec.* 5670. Indeed, the legislative history reveals that several senators were concerned about possible conflicts between Section 13(c) and state law, particularly in the area of the right to strike. *Id.* at 5672-73. Senator Morse, the chief sponsor of the bill which became Section 13(c), assured his colleagues that state laws forbidding public employee strikes would supercede national labor policy, but *only* where the right to strike was concerned; *all other* collective bargaining rights would be protected. *Id.* at 5671-73. Senator Morse made the following comments on the bill:

> It is impossible to satisfy all Senators. The reason why it is impossible to satisfy them all is that we cannot satisfy each instance and protect the Federal policy, because some changes are going to have to be made in some of the States to conform to the Federal policy.
>
> I do not think there would be any great wrong done if we simply said to a State "You do not qualify for this Federal grant." It does not mean they are entitled, as a matter of right, to the Federal grants irrespective of the fact that they are not following a policy that is in conformity with a Federal policy . . . . *Id.* at 5675.

Jackson points out, correctly, that Section 13(c) was designed to encourage flexibility in formulating labor protective "arrangements." Senator Morse himself suggested that if local law prohibits collective bargaining by municipal employees, alternative solutions such as entrusting management

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of the transit authority to a private commission which *could* legally bargain with the union might be explored. *See also* Department of Labor Guidelines, 43 F.R. 13558 (3-31-78). The point, of course, is not that Congress was willing to make allowances for local problems. Rather, the point is that to qualify for federal funds, municipalities *must*, one way or another, undertake to protect the collective bargaining rights required by national labor policy.

In summary, the rights Section 13(c) preserves are federal rights. In *Transamerica Mortgage Advisors, Inc.* v. *Lewis, supra*, the Supreme Court found that Section 215 of the Investment Advisors Act creates a limited private right of action. In determining the appropriate forum for such an action, the Court observed:

> One possibility, of course, is that Congress intended that claims under § 215 would be raised only in state court. But we decline to adopt such an anomalous construction without some indication that Congress in fact wished to remit the litigation of a federal right to the state courts. 444 U.S. at 20, n. 8.

Applying that approach to the present case, we hold that the Union is entitled to pursue its claim in federal court.

In reaching this decision, we note a recent tendency on the part of the Supreme Court to limit the inference of private actions from federal statutes. In *Touche Ross* v. *Redington, supra*, Justice Rehnquist was explicit on this point:

> To the extent our analysis in today's decision differs from that of the Court in *Borak*, [*J. I. Case Co.* v. *Borak*, 377 U.S. 426 (1964)], it suffices to say that in a series of cases since *Borak* we have adhered to a stricter standard for the implication of private causes of action, and we follow that stricter standard today . . . The ultimate question is one of congressional intent, not one of whether this Court thinks that it can improve on the statutory

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> scheme that Congress enacted into law. 442 U.S. at 578. (citation omitted.) *See also Transamerica Mortgage Advisors, Inc.* v. *Lewis, supra.*

A careful reading of those cases, however, persuades us that neither *Touche Ross* nor *Transamerica* requires a different result here.

In *Touche Ross,* the Court declined to infer a private right of action from Section 17(a) of the Securities Exchange Act of 1934, which requires broker-dealers to maintain certain records and file certain reports with the SEC. The Court emphasized that Section 17(a) neither grants private rights to the members of an identifiable class, nor prohibits specific conduct. 442 U.S. at 569. Here, by contrast, we have already found that Section 13(c) of the Act does confer federal rights on transit employees, including the right to continued collective bargaining.

Transamerica involved not only Section 215 of the Investment Advisors Act, noted above, but Section 206 of that statute as well. The Court held that Section 206 does not imply a private cause of action. Unlike the statute in *Touche Ross,* Section 206 does explicitly prohibit investment advisors from engaging in certain fraudulent practices. Concededly, it was enacted for the protection of investment advisors' clients. However, the Court makes clear that the dispositive issues in *Transamerica* were the overall statutory scheme, which includes no fewer than three enforcement provisions yet omits any reference to private suits, and the legislative history, which strongly suggests that Congress did *not* intend to imply a private right of action. No such benchmarks appear in the present case. We have found nothing in the Act or its history which indicates that Congress intended to deny transit employees an opportunity to enforce their federal rights in federal court.

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II. The Union's Claim against the Secretaries of Labor and Transportation.

We begin our discussion of this final issue by pointing out that the threshold inquiry is whether either Secretary has a statutory duty to enforce Section 13(c) agreements on behalf of transit employees. If no such duty exists, our analysis need go no further.

The Act makes only two references to the role of the Secretary of Labor. Sections 3(e)[1] and 13(c) require the Secretary, as part of the grant approval process, to certify that labor protective arrangements are "fair and equitable." Neither section intimates that the Secretary is expected to supervise the conduct of the parties after an acceptable agreement is reached and the grant disbursed. According to the Union, however, "it stands to reason" that the Secretary should also bear continuing responsibility for enforcing the terms of Section 13(c) agreements. Whether or not we agree with the policy behind the Union's position, we decline to substitute our judgment on the issue for that of Congress.

The legislative history affords the Union no more support than does the statute itself. In the course of the Senate and House Hearings on the bill, then-Secretary of Labor Wirtz referred to the "administration" of Section 13(c). On each occasion, however, his remarks were made in the context of formulating guidelines for "fair and equitable" arrangements. Senate Hearings on S.6, 88th Congress, 1st Sess. at p. 309. *See also* S.Rep. #82, 88th Cong., 1st Sess. 28; H.R.Rep. #204, 88th Cong., 1st Sess. 16.

Unlike the Secretary of Labor, the Secretary of Transportation does have several specific enforcement obligations

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[1] Section 3(e) of the Act (49 U.S.C. 1602(e) provides in pertinent part:

> No financial assistance shall be provided under this chapter to any State or local public body . . . unless . . . (4) the Secretary of Labor certifies that such assistance complies with section 1609(c) [Section 13(c)] of this title.

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under the Act. Section 3(f), 49 U.S.C. § 1602(f), for example, explicitly requires him to supervise *and* enforce protective arrangements which ensure that federal grants will not be used to force private charter bus operators out of the competitive market. Similarly, Section 3(g), 49 U.S.C. § 1602(g) requires an agreement by grant recipients not to engage in school bus operations except under limited circumstances. Again, the Secretary of Transportation has specific enforcement duties. To administer his responsibilities in the areas of school and charter bus operations, the Secretary has promulgated extensive regulations which include provisions for judicial review of agency action in accordance with the Administrative Procedure Act. 49 C.F.R. 604.1 *et seq.*; 49 C.F.R. 605.1 *et seq.* *See also Bradford School Bus Transit, Inc.* v. *Chicago Transit Authority, supra.*

With respect to Section 13(c), however, we are unable to conclude that Congress has imposed mandatory enforcement duties on the Secretary of Transportation. In the first place, the only administrative official even mentioned in that section is the Secretary of Labor, whose limited role we have already discussed. It would be unreasonable to assume that Congress intended to require the Department of Transportation to resolve labor relations disputes, yet neglected to say so despite its explicit mandate under other sections of the statute. Furthermore, we have discovered nothing in the legislative history to indicate that Congress contemplated the result the Union seeks here. This statute was enacted eighteen years ago, yet nothing in the record before us suggests that the Secretary of Transportation has ever assumed responsibility for enforcing the terms of labor protective agreements. This factor alone is scarcely dispositive of the issue. However, it is not unlikely that Congress would have amended Section 13(c) had it perceived a need for active enforcement by the Department of Transportation. Indeed, Congress did respond to just such a need when it added Section 3(f), discussed above, to the Act in 1974.

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We are aware that the First Circuit has indicated a belief that the Secretary of Transportation has at least discretionary authority to enforce labor protective arrangements by virtue of Section 12(e) of the Act. [49 U.S.C. § 1608(e)]. *Local Division 714* v. *Greater Portland Transit District, supra.* It stopped short of deciding that transit employees can compel the Department of Transportation to take action, although it characterized that possibility as "plausible." 589 F.2d at 14. It is impossible to determine from *Greater Portland* whether our decision here actually conflicts with the law in the First Circuit, since that court's analysis was purely hypothetical. The Secretary of Transportation was not a party to that case, and the question of administrative enforcement of Section 13(c) was not at issue. Instead, the First Circuit offered its interpretation of the Secretary's statutory role as one of several arguments in favor of inferring a private federal cause of action on behalf of the plaintiff union.

In any event, the Union has failed to demonstrate a sufficient reason to compel the Secretary of Transportation to take action in this controversy. In the absence of a clear Congressional mandate, we decline to force the Department of Transportation to supervise labor-management relations.

The judgment of the District Court dismissing the Union's claim against Jackson is reversed and remanded for proceedings consistent with this opinion. The judgment dismissing the claim against the Secretaries for lack of jurisdiction is reversed with instructions to enter a judgment dismissing the claim for failure to state a cause of action upon which relief can be granted.

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MERRITT, Circuit Judge, dissenting. The key question in this case is whether § 13(c) of the Urban Mass Transportation Act, 49 U.S.C. § 1601 *et seq.* (1976), a grant program established in 1964, creates a private federal right of action for breach of contract for employees against local municipal transit authorities receiving federal funds. Section 13(c) provides that there shall be no federal funding under the Act in the absence of "fair and equitable arrangements . . . as determined by the Secretary of Labor, to protect the interests of employees affected by" the program. The section goes on to say that "[s]uch protective arrangements shall include . . . provisions" respecting topics such as the "preservation" and "continuation" of collective bargaining rights and prevention of "a worsening" of employee rights. The section says that "[t]he contract for the granting of any such assistance shall specify the terms and conditions of the protective [employee] arrangements." 49 U.S.C. § 1609(c).

In this case the municipal transit authority allegedly decided after a collective bargaining agreement had been in effect for several months not to abide by portions of the agreement that required cost of living increases. The employees sued the city in federal court for enforcement of their contract.

Last week the Supreme Court decided another in a long line of private right of action cases. It unanimously held that § 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. § 403, does not create a private right of action, *California* v. *Sierra Club*, 49 U.S.L.W. 4441 (Nos. 79-1252, 79-1502, April 28, 1981). Our Court had previously decided the question the other way. *Norfolk & Western Co.* v. *United States*, 641 F.2d 1201 (6th Cir. 1980). The concurring opinion in the *Sierra Club* case by Justice Rehnquist for himself, the Chief Justice, and Justices Stewart and Powell, observes that courts of appeals are continuing to analyze the private right of action problem incorrectly and to imply too much — in "five of the last six statutory implied

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right of action cases" creating a new action the "analysis by the Courts of Appeals" has been wrong, 49 U.S.L.W. at 4445.

The opinion for the court in the *Sierra Club* case, written by Justice White, emphasizes that the inquiry in such cases is now fairly narrow:

> As recently emphasized, the focus of the inquiry is on whether Congress intended to create a remedy [citing recent cases]. The federal judiciary will not engraft a remedy on a statute, no matter how salutary, that Congress did not intend to provide.
> 49 U.S.L.W. at 4444.

Although Congress intended to have the Secretaries of Labor and Transportation protect the interests of transit employees as a class, I do not see in this statute or its legislative history that Congress intended to create a new, original, federal, private right of action for breach of contract claims. The Secretary of Transportation can withhold funds, or perhaps the Secretary of Labor can take administrative steps, if they disapprove of the city's conduct toward its transit employees. The Secretary of Transportation can sue to enforce his agreement with a municipality. 49 U.S.C. § 1608(a). But there is nothing in the statute itself or the committee reports and debates that even hints that Congress contemplated that federal courts would decide what contractual rights should be preserved and what salary and fringe benefits are "fair and equitable" when a municipal transit worker is aggrieved by the action of his employer. There is a large number of bus drivers in the country, and Congress wanted them to know that it had considered their interests and authorized some administrative protection. But this does not mean that Congress intended to engraft a judicial remedy on the statute. Congress has not provided a principle or rule of decision for us to administer in such cases — other than general fairness. There is at stake no clearly enunciated national policy relating to municipal employee relations.

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There is no reason to think that state courts in the performance of their traditional, common law role cannot decide these private breach of contract cases just as fairly and just as efficiently as federal courts.

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ATH EXH. NO. C

TABLE 7

NUMBER OF PROJECTS HAVING RECEIVED DOL 13(c) CERTIFICATION

(Cumulative Totals)

Date	Number*
Sept. 30, 1979	49
March 30, 1980	242
Sept. 30, 1980	697
Dec. 31, 1980	851

Note: *The number of projects is not the number of Recipients. Separate certifications for capital and operating assistance were given to the Recipients.

Source: U.S. Department of Labor, Division of Employee Protections.

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ATU EXH. NO. D

RECEIVED
ATU LEGAL DEPT.
MAY 20 1981
FILE

FEDERAL HIGHWAY ADMINISTRATION PROGRAM
Rural & Small Urban Public Transportation
Monthly Report for April, 1981

DESCRIPTION OF ACTIVITY	TOTAL (Month)	FY TOTAL (To Date)	PROGRAM TOTAL (To Date)
I. WARRANTY			
1. Pending at start of Period	1	2	0
*2. Received Certification from Public Body	31	350	1,047
**3. DOL Authorization to Release Funds	32	352	1,047
4. Pending at end of Period	0	0	0
II. SUBSTITUTE ARRANGEMENTS			
1. Pending at Start of Period	1	1	1
2. Request for Substitute Arrangements Received	0	0	0
3. Substitute Arrangements Denied	0	0	0
4. Substitute Arrangements Granted	0	0	0
5. Substitute Arrangements Pending at end of Period	1	1	1
III. WAIVER			
1. Pending at Start of Period	0	0	0
2. Waiver Request Received	0	0	4
3. Waiver Denied	0	0	4
4. Waiver Granted	0	0	0
5. Waiver Pending	0	0	0

*The number of WARRANTIES received from the Public Bodies before the reporting period began on October 1, 1979 was 50.

**The number of DOL Authorizations to release funds under the WARRANTY before the reporting period began on October 1, 1979 was 49.

NOTE: There were no substitute arrangements or waiver requests before October 1, 1979.

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April 21, 1981

ATU EXH. NO. E

The Warranty has been adopted for projects in the following States:

STATE	DATE 1st SIGNED ONTO WARRANTY
1. Alabama	April 11, 1980
2. Alaska	July 16, 1980
3. Arizona	April 21, 1981
4. Arkansas	July 8, 1980
5. California	August 15, 1980
6. Connecticut	January 8, 1980
7. Colorado	March 4, 1980
8. Florida	November 20, 1979
9. Georgia	December 12, 1979
10. Hawaii	June 9, 1980
11. Idaho	September 24, 1979
12. Illinois	December 14, 1979
13. Indiana	December 12, 1979
14. Iowa	May 5, 1980
15. Kentucky	July 18, 1979
16. Louisiana	August 12, 1980
17. Maine	April 3, 1980
18. Maryland	December 24, 1979
19. Massachusetts	October 9, 1979
20. Michigan	August 20, 1979
21. Minnesota	September 9, 1980
22. Mississippi	March 31, 1981
23. Missouri	December 10, 1979
24. Montana	February 14, 1980
25. Nebraska	December 28, 1979
26. New Hampshire	January 15, 1980
27. New Jersey	May 27, 1980
28. New Mexico	April 14, 1980
29. New York	February 20, 1980
30. North Carolina	September 17, 1979
31. North Dakota	October 17, 1979
32. Nevada	July 31, 1980
33. Ohio	May 30, 1979
34. Oregon	March 3, 1980
35. Pennsylvania	July 24, 1979
36. South Carolina	October 5, 1979
37. South Dakota	November 5, 1979
38. Tennessee	August 17, 1979
39. Texas	March 13,1980
40. Utah	June 6, 1980
41. Vermont	May 2, 1979
42. Virginia	January 17, 1980
43. West Virginia	November 1, 1979
44. Wisconsin	November 29, 1979
45. Wyoming	April 3, 1980

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Area Corporation

Everett 206 259 4223

ATU EXH. NO. F

Certified Mail

January 7, 1981

The Honorable Senator Slade Gorton
U. S. Senate
Russell Office Building
Washington, D.C. 20510

Dear Senator Gorton:

I am writing to you on behalf of the Snohomish County Public Transportation Benefit Area Corporation (SCPTBAC), a public transportation agency in Snohomish County, Washington.

For the past four years, we have been extremely concerned with some of the federal requirements imposed by the Urban Mass Transportation Administration and the Department of Labor which local transit operating agencies must meet before they may receive federal assistance for transit. One of the most onerous of these requirements is the employee protective agreement commonly known as a "13(c) Agreement" specified by the U.S. Department of Labor.

The "13(c) Agreement" requirement is set forth in Section 13(c) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1601 et seq. as follows:

> (c) It shall be a condition of any assistance under section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interest of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their position with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

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Through various administrative interpretations as set forth in the enclosed article by Joseph S. Kaufman and David F. Girard-diCarlo entitled "Section 13(c) of the Urban Mass Transportation Act - Developments", "13(c) Agreement" for federal assistance has evolved from a simple certification to the enclosed "Agreement Pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, as Amended"; the "13(c) Agreement" required for federal assistance.

A review of the Agreement demonstrates that it requires local transit agencies to submit to some very onerous legal liabilities as a condition to receiving federal funds. The following are examples which are representative of the types and extent of unrealistic and unnecessary contractual committments currently required of the local transit agency:

Undefined Application of 13(c) Protections

Allowances up to six (6) years salary and benefits for "affected" employees are to be provided if adverse effects on an employee can be linked (directly or indirectly) to the project. The definition of the project is defined in part in Paragraph 1 (page 1) of the model "13(c) Agreement" as:

> "(1) The term "Project", as used in this agreement, shall not be limited to the particular facility, service, or operation assisted by federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project" shall, when used in this agreement, include events occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of bus ness or changes in volume and character of employment brought about by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this agreement."

The potential impacts of these provisions in terms of additional administrative and legal costs and possible allowance payments are incalculable, since it is impossible to predict the types and extent of adverse effects which could be directly or indirectly linked with such a broad definition of a project.

Change in Point of Employment

Paragraph 12(e) (page 9) of the model "13(c) Agreement" furnishes relocation expenses to employees who may be required to:

> "...transfer to work locations twenty (20) miles from former work location or further from residence or thirty (30) miles from residence and farther from former work location..."

The SCPTBAC and other small transit systems serve smaller, rural communities which may fall within the parameters of this provision. In addition, the establishment of satellite operations offices could result in substantial cost savings to the public. This could be

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prohibited as a result of this clause, since the management is restricted from making work assignments which could result in a claim pursuant to this section.

Commencing New Operations

A small, new transit system is faced with attempting to establish itself plus meet the demands of annexations and other new areas of need. Paragraph 5(a) (page 2)of the model "13(c) Agreement" provides that:

> "...any change in the organization or operation of its system which may result in...rearrangement of the working force..." [shall do so only following notification to and negotiation with affected union(s)].

This section again strips the management of its ability to implement new service in the most cost-effective manner, and mandates the negotiation and potential arbitration of every new operation of the transit system.

Additional Parties to the Agreement

Paragraph 27 (page 16) of the model "13(c) Agreement" provides that:

> "...any other union which is the collective bargaining representative of urban mass transportation employees in the service area of the recipient...may become a party to this agreement..." and "...any disagreement...shall be determined by the Secretary of Labor."

The service area of the SCPTBAC extends into the service areas of two other mass transportation systems for purposes of express service for commuters and system linkages. The possibility of having two or more additional parties to an agreement of this nature as determined by the Secretary of Labor provides yet another example of usurped management prerogatives and potential but incalculable costs to the taxpayer.

Interest Arbitration

Paragraph 15 (page 11) of the model "13(c) Agreement provides that:

> "...In the event there arises any labor dispute with respect to this agreement...or by impasse resolution provision in a collective bargaining or protective agreement involving the Recipient and the Union,....it may be submitted at the written request of the Recipient or the Union to a board of arbitration..."

This clause obligates the transit operator to potential interest arbitration of existing collective bargaining agreements, even though this is contrary to Washington State Laws and not provided for in such agreements.

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Recently, the Federal District Court in Seattle ruled in favor of the Union that this section of the "13(c) Agreement" mandated arbitration of impasse on their collective bargaining process.

These are but five of the concerns that we have with relation to the proposed "model" agreement, and I have not even approached the subject of unreasonable costs as a result of delays caused by a lack of meaningful Federal guidelines.

Not only are the substantive legal committments of the "13(c) Agreement" very difficult for a local transit operator to cope with, but also the enclosed GAO report, dated July 19, 1976, demonstrates the administrative problems that have arisen from the continuing escalation of the 13(c) requirements.

A simple, one-page certification was all that was necessary during the early years of the UMTA program but still placed operators in an unfair negotiating position and in financial jeopardy due to unforeseen claims, administrative costs and hidden costs to the taxpayers.

It is our recommendation that Section 13(c) of the Act should be repealed or substantially modified.

We would like to meet with you in Washington, D.C., later this month to discuss this issue further. Please advise us of a date convenient to you.

Very truly yours,

Daryl D. Brennick, Chairman
Board of Directors

Attachments:
1. Section 13(c) of the Urban Mass Transportation Act - Developments Kaufman and Girard-diCarlo
2. Agreement Pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, As Amended
3. Program to Certify the Agreements to Protect Employees Affected by Grants Made Under the Urban Mass Transportation Act of 1964 Report of the Comptroller General of the United States

cc: John Solheim
Gary Nelson, Washington State Representative

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Honorable Slade Gorton
United States Senate
Washington, D.C. 20510

Dear Senator Gorton:

This letter is in response to your recent communication to the Department of Labor with which you enclosed a copy of a letter you received from Mr. Daryl D. Brennick, Chairman of the Board of Directors of the Snohomish County Public Transportation Benefit Area Corporation (SCPTBAC), regarding the Corporation's concerns about the employee protection requirements of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended (UMTA).

In his letter Mr. Brennick refers to a number of specific employee protection provisions which are apparently drawn from what is termed the Model Agreement. In this response to you, I will first provide you with some background on the enactment of the statutory employee protection provision, then describe the development of the Model Agreement, and finally discuss each of Mr. Brennick's specific areas of concern.

In the development of the Section 13(c) employee protection provisions, the 1963 Report of the U.S. Senate Committee on Banking and Currency which accompanied the Urban Mass Transportation Act stated the opinion that the assistance to be provided by the bill would save many jobs of workers engaged in transit and also generate new jobs. Nevertheless, the Committee also expressed a concern that in individual communities, workers might be adversely affected as a result of assistance extended under the Act, citing as examples projects which introduced new types of equipment and projects which assisted in the acquisition of the facilities of one employer by another. The House report on the bill observed that:

> "...all workers adversely affected by adjustments effected under the bill should be fully protected in a fair and equitable manner, and that Federal funds should not be used in a manner that is directly or indirectly detrimental to legitimate interests and rights of such workers."

Under the terms of Section 13(c), which Mr. Brennick quotes verbatim on the first page of his letter, a grant of assistance can be made only if the Secretary of Labor has certified that the required employee protective arrangements have

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been made. Such arrangements must include certain provisions, without which the Act's requirements are not satisfied. The protections provided are to be no less than those established pursuant to Section 5(2)(f) of the Interstate Commerce Act. In the legislative history of the Act, the Congress expressed its intent that specific conditions for worker protection would normally be the product of local bargaining and negotiations between the applicant for Federal assistance and representatives of affected employees.

In November, 1974, the Urban Mass Transportation Act was amended to include a formula grant program under which, for the first time, grant funds could be applied to pay operating expenses. These projects are generally routine in nature, as they are usually reimbursements for operating expenses incurred during the previous year. The requirements of Section 13(c) were made applicable to this new formula grant program.

On July 23, 1975, a National Section 13(c) Employee Protective Agreement (Model Agreement) was signed by officials of the transit industry and major transportation labor organizations. The development of this agreement was a result of an industry initiative, supported by the Secretary of Labor, to aid and expedite the implementation of the statutory employee protection requirements for general purpose operating assistance projects. The industry participants included representatives of properties of differing sizes, geographic location and management philosophies. The provisions of the Model Agreement attempt to be responsive to the diverse local circumstances of the signators. The Model Agreement is designed for use by individual transit employers and representatives of employees in the areas of proposed operating assistance projects. When executed by them, it serves as the basis for the Secretary of Labor's certification that the required employee protections have been provided.

Acceptance and endorsement of the Model Agreement is strictly voluntary. For example, the MBTA (Boston), SORTA (Cincinnati, Ohio), MARTA (Atlanta, Georgia), the Pierce Public Benefit Area (Tacoma, Washington) presently do not utilize the Model Agreement. Because of its widespread and successful use in diverse localities throughout the country, however, the Department of Labor has encouraged its use. Nearly 1000 grants have been certified on the basis of the Model Agreement since it was first used in August of 1975. In the state of Washington during FY 1980, of 10 operating assistance requests, 9 were certified on the basis of the parties' agreement to application of the Model Agreement's terms and conditions.

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In his letter, Mr. Brennick expressed his concerns regarding several specific provisions of the Model Agreement.

1. The first issue of concern deals with the definition of project under the Model Agreement and the period of protection provided to employees who are found to be adversely affected by the project, and how these two provisions may cause incalculable costs for local transit agencies. In order for an employee to successfully claim adverse effect under the Model Agreement and trigger the protections provided therein, his or her employment conditions must be worsened as a result of the project. Changes which are not caused by the project such as seasonal fluctuations in employment, downturns in business or dismissals for cause would not give rise to a claim under the Model Agreement protections. Additionally, the Model Agreement is not intended to apply to any employee whose dismissal, displacement or worsened position results solely from the termination of the Project or its funding. When an employee alleges adverse effect, he or she is obligated to identify the project which caused the alleged harm and to specify the pertinent facts of the project upon which the claim is based. Since the Model Agreement was executed, the Department of Labor has determined 3 cases in which an employee claimed to be affected by an operating assistance grant. In each of the cases OL determined that the individual had not been affected by the project.

The protective period for an affected employee extends from the date of the employee's displacement or dismissal for a period equal to an employee's length of service but not to exceed a maximum of six years. This is the current statutory minimum level of protections under Section 5(2)(f) of the Interstate Commerce Act as amended which is the minimum floor for protections specifically required under Section 13(c). Thus there is no discretion for the Department of Labor to approve any less protection.

2. The second area of concern deals with relocation benefits to employees who are required to transfer their work location as a result of the project. Benefits accrue under Paragraph 12(a) of the Model Agreement only to employees "retained or returned to service who are required to change the point of their employment as a result of the project, and thereby required to move his or her place of residence." This means that an employee who is forced to change his or her place of residence as a result of a change in work location beyond a specified distance may qualify for reimbursement of relocation expenses, if he or she meets the other criteria of eligibility.

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The relocation formula contained in the Model Agreement has its statutory origin in Section 501 (f)(6) of the Rail Reorganization Act of 1973. This formula has had widespread usage in localities of diverse geographic composition and commuting distances, without evidence of any claims activity. However, we do recognize that the relocation formula contained in the Model Agreement may have a different impact on different localities, and local circumstances might dictate a modification to accommodate local needs. At the request of any interested party the Secretary may individually review the circumstances of a specific locality to determine whether there exist special circumstances which warrant modification to provisions of the Model Agreement. In any case, the parties are free to not utilize the Model Agreement and to voluntarily negotiate a relocation formula suitable to their local situation.

3. The third area of concern described in Mr. Brennick's letter involves Paragraph 5(a) of the Model Agreement. Paragraph 5 a) and (b) provides a procedure for notice and subsequent negotiations over the implementation of any changes in the organization or operation of the transit system made as a result of the project. As specified in this provision, changes which are not a result of Federal assistance "but which grow out of the normal exercise of seniority rights occasioned by seasonal or other normal schedule changes and regular picking procedures under the applicable collective bargaining agreement" are not considered within the purview of this paragraph. This provision has its origins in Sections 4 and 5 of the Washington Job Protection Agreement of 1936.

In a 1971 letter to the Department of Labor regarding the inclusion of notice and negotiation provisions analogous to those found in Sections 4 and 5 of the Washington Job Protection Agreement in contracts made pursuant to Section 403(b) of the Rail Passenger Service Act of 1970, then Assistant Attorney General William H. Rehnquist stated that these provisions are "benefits" within the meaning of the Act and must be included in the contracts prior to their certification by the Secretary of Labor. He further stated that some form of notice, right to negotiation and arbitration must be required by the Secretary under the provisions of the Act. The language contained in Section 403(b) of the 1970 Act is identical to the language of Section 13(c) of UMTA which requires that the employee protection arrangements "shall in no event provide benefits less than those established pursuant to Section 5(a)(1) of the Interstate Commerce Act." Therefore, we believe that the inclusion of such a notice and negotiation provision is required under Section 13(c) of UMTA.

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The procedure outlined in Paragraph 5(a) and (b) can be extremely beneficial to local parties in dealing with work-force changes which will be made as a result of a project. It gives the parties procedures to arrive at the orderly implementation of such changes. It in no way prevents management from making those changes.

4. Mr. Brennick's fourth area of concern involves allowing unions in the service area of a project to become parties to the Model Agreement. The language and legislative history of Section 13(c) do not limit coverage under employee protective arrangements to employees of the applicant for Federal assistance. Rather, eligibility for coverage is extended to affected employees of all urban mass transportation providers in the service area of the project. Paragraph (27) of the Model Agreement, which allows other representatives of affected employees in the service area of a project to become parties to the agreement, only allows the parties coverage under the agreement. No benefits accrue to the parties unless actual adverse effect has been shown to have occurred. This provision expedites case processing, as it eliminates the need to separately negotiate individual arrangements with all representatives of employees who may potentially be in the service area of the project. Any request by a union to become party to the agreement is first circulated to all existing parties. The Department reviews any objections received before determining the appropriateness of recognizing a union as a party to the agreement.

5. The final specific issue raised in the letter is Mr. Brennick's concern that Paragraph (15) of the Model Agreement may potentially require binding arbitration of interest disputes. Paragraph (15) of the Model provides a self-governing dispute resolution procedure for disputes arising over the interpretation, application and enforcement of the terms and conditions of the protective arrangement itself. It is intended to serve as a mechanism, to be used by either party to the agreement, to obtain a resolution of any dispute arising under the terms of the Model Agreement. This provision does not require the arbitration of collective bargaining agreements. It provides the parties with a self-governing procedure for resolving questions of violation or interpretation of the arrangements, without the necessity of bringing the dispute to the Department of Labor or the courts.

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Our case files show that the Snohomish County Public Transportation Benefit Area Corporation applied for capital assistance under UMTA in 1977. Although a tentative employee protection agreement was reached by negotiators for the Corporation and the Amalgamated Transit Union, representing its employees, that agreement was not approved by the Corporation's Board of Directors. SCPTBAC subsequently withdrew its application before additional action was taken to try to finalize employee protections for certification on our part.

We remain willing to discuss any issues and assist the SCPTBAC in any way possible in order to enable it to develop arrangements which meet the statutory employee protection requirements of the Act. We would note that under our 13(c) guidelines DOL can establish a time schedule for negotiations where appropriate. If negotiations break down or irreconcilable issues are present, the Department of Labor will incorporate into the time schedule for negotiations dates by which the Secretary will take alternative action, including action to establish the protective terms and conditions.

Mr. Brennick makes reference in his letter to an attached article by Joseph S. Kaufman and David P. Girard-diCarlo entitled "Section 13(c) of the Urban Mass Transportation Act-Developments." We are unfamiliar with this article and it was not included in the transmittal we received, therefore we are unable to speak to its contents. There have been, however, several studies conducted regarding the administration and impact of Section 13(c) on transit systems and their operations which found there to be no significant negative impacts caused by the employee protection requirements of the UMTA. I have enclosed a copy of excerpts from three studies funded by the Department of Transportation. I have also enclosed for your information copies of the Model Agreement and DOL's Guidelines for Section 13(c) certification processing.

I hope this information will be useful to you in responding to your constituent. Please do not hesitate to contact me if you have further questions or desire additional information.

Sincerely,

Hilary H. Sheply
Acting Deputy Assistant Secretary

Enclosures

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ATU EXH. NO. H

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DIVISION 1309, AMALGAMATED TRANSIT UNION, AFL-CIO, Plaintiff, v. SAN DIEGO TRANSIT CORP., Defendant.	Civil No. 78-1093-E MEMORANDUM DECISION

Plaintiff Transit Union brings this motion for a preliminary injunction requesting dual relief. First, plaintiff seeks an order preserving and continuing all rights and benefits of employment until a new collective bargaining agreement can be concluded between the parties. Second, plaintiff requests an order compelling interest arbitration. Upon due consideration of the memoranda submitted by the parties and the arguments and evidence presented at the time of the hearing, the court hereby grants plaintiff's request for a preliminary injunction.

The union and the employer are parties to a collective bargaining agreement. They are also parties to a separate agreement required by the Urban Mass Transit Act, 49 U.S.C. §§ 1601 et seq. San Diego applied for aid under the Act. Section 13(c) of the Act requires grant recipients to provide satisfactory protective arrangements for its employees, to

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preserve existing collective bargaining agreements and to continue collective bargaining rights.

The union and the employer entered a section 13(c) agreement in 1967, which was renewed most recently in 1973. The agreement provided that all rights under existing collective bargaining agreements would be preserved and that the collective bargaining rights, including the right to arbitrate labor disputes, would be continued. The agreement also provided that in the event of a labor dispute where collective bargaining does not result in an agreement, "the labor dispute may be submitted to a board of arbitration. . . ." The Secretary of Labor approved the contract and certified the grant. Similar grants were approved in the following years, always on condition that the section 13(c agreement be extended to the new grant.

The union and the employer are also parties to a collective bargaining agreement. The agreement provides that it shall remain in full force and effect during negotiations for a new collective bargaining agreement.

During recent contract negotiations with the union, the employer represented that it would institute several proposed contract modifications unilaterally when the contract expired. The union claims that these changes would reduce wages twenty to thirty percent, change rules allowing employees to choose shifts, reduce sick leave benefits and change rules on seniority and the hiring of part-time employees. The union demanded arbitration on December 27, 1978 and the employer refused.

The employer first argues that the Norris-La Guardia Act, specifically 29 U.S.C. § 104, prohibits an injunction in the present case. That section provides that no United States court has jurisdiction to enter an injunction in a

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labor dispute "to prohibit any person or persons . . . from . . . ceasing or refusing to perform any work or to remain in any relation of employment." The employer claims that the injunction in the present case would force it to remain in an existing employment relationship.

Norris-La Guardia was the first of several major labor statutes and was designed to prevent intervention by the federal courts in labor organizing drives. At the time Norris-La Guardia was enacted, the federal courts were perceived as an ally of the employer and the strike injunction was often abused. Boys Markets, Inc. v. Retail Clerk's Union, Local 770, 398 U.S. 235, 90 S. Ct. 1583, 26 L. Ed. 2d 199 (1970). The Ninth Circuit has stated that the Norris-La Guardia Act was not enacted to protect employers from actions to enforce commitments in their labor agreements. Retail Clerk's Union, Local 1222 v. Alfred M. Lewis, Inc., 327 F.2d 442 (9th Cir. 1964).

The Supreme Court has stated that the prohibitions of the Norris-La Guardia Act must yield to the specific commands of later legislation under ordinary principles of statutory construction. Chicago & North Western Railway Co. v. United Transportation Union, 402 U.S. 570, 582 n.18, 91 S. Ct. 1731, 1738 n.18, 29 L. Ed. 2d 187 (1970). In that case, the Court approved in principle the use of an injunction to enforce bargaining requirements of the Railway Labor Act. Two Courts of Appeals have recently approved injunctions mandating compliance with contracts signed pursuant to the Urban Mass Transit Act's section 13(c) requirements. Local 519, Amalgamated Transit Union v. La Crosse Municipal Transit Utility, No. 77-1981, slip op. (7th Cir. Oct. 19, 1978); Division 1287, Amalgamated Transit Union v. Kansas City Area Transportation Authority, 582 F.2d 444 (8th Cir. 1978), cert denied, No. 78-734,

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1978 Term (Jan. 8, 1979). But see Division 580 Amalgamated Transit Union v. Central N.Y. Regional Transportation Authority, 556 F.2d 659 (2d Cir. 1977), decision after remand vacated as moot, 578 F.2d 29 (2d Cir. 1978).

Thus, the union contends that the Boys Markets exception applies here. Boys Markets, Inc. v. Retail Clerk's Union, Local 770, 398 U.S. 235, 90 S. Ct. 1583, 26 L. Ed. 2d 199 (1970). In that case, the Supreme Court allowed an injunction to enjoin a strike and enforce an agreement to arbitrate. The employer seeks to distinguish this case on the ground that it involved an agreement containing a no-strike clause, and relies on language that the no-strike clause was the quid pro quo for the mandatory arbitration provision. The contract in the instant case does not contain a no-strike clause.

However, in both Local 519, Amalgamated Transit Union v. La Crosse Municipal Transit Utility, No. 77-1981, slip op. (7th Cir. Oct. 19, 1978) and Division 1287, Amalgamated Transit Union v. Kansas City Area Transportation Authority, 582 F.2d 444 (8th Cir. 1978), cert. denied, No. 78-734, 1978 Term (Jan. 8, 1979), the employer argued that arbitration could not be compelled because the union had the right to strike. (See Plaintiff's Reply Memorandum in Support of Plaintiff's Motion for a Preliminary Injunction, Exh. B at 302, Exh. C n.13) Nevertheless, both courts enforced the arbitration provision of the Urban Mass Transit Act agreements by injunction. In addition, the employer received millions of federal dollars in exchange for its agreement to preserve employee rights through its section 13(c) agreements. Compliance with the agreement would seem to be the quid pro quo for receipt of federal funds. The court finds that the Norris-La Guardia Act is no barrier to an injunction in the present controversy.

On a motion for preliminary injunction this court looks

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to the alternate standards set forth in Wm. Inglis & Sons Baking Co. v. ITT Continental Baking Co., 526 F.2d 86 (9th Cir. 1975). Plaintiff must show either (1) probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply in plaintiff's favor.

Dealing first with plaintiff's request for interest arbitration, the court believes that plaintiff's success on the merits can be characterized as probable. The three cases cited by plaintiff are very similar to the present suit and are strong authority for enforcing the section 13(c) agreement to arbitrate. Two of these cases required arbitration under similar circumstances and with similar contract language in issue. The third case was decided primarily on jurisdictional grounds and did not reach the propriety of the injunction. Local 714, Amalgamated Transit Union v. Greater Portland Transit Dist., No. 78-1077, slip op. (1st Cir. Nov. 15, 1978). In the Kansas City case, the 13(c) agreement contained language almost identical to the 13(c) agreement in question here. The court held that the language required interest arbitration at the request of either party. Although several agreements had been concluded between the parties, including a collective bargaining agreement, the court noted that it was basing its decision on the 13(c) agreement alone. Division 1287, Amalgamated Transit Union v. Kansas City Area Transportation Authority, 582 F.2d 444, 451 (8th Cir. 1978), cert. denied, No. 78-734, 1978 Term (Jan. 8, 1979).

The employer distinguishes the cases approving injunctions on the ground that they involved public rather than private employees. This distinction is important, employer argues, because public employees are deprived of the right to strike which is the quid pro quo of the duty to arbitrate.

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The union's arguments on this issue are persuasive. It first notes that defendant concluded several 13(c) agreements over the past several years, receiving substantial funding under the Urban Mass Transit Act in exchange for agreeing, inter alia, to preserve employee rights and to arbitrate disputes. This was its quid pro quo for abiding by the 13(c) agreement, including the arbitration provision. In addition, the language of section 13(c) applies to all grant recipients, and makes no distinction between private and public employees. 49 U.S.C. § 1609.

The employer next challenges success on the merits by arguing that the contract language here is permissive and provides only that a dispute "may" be submitted to arbitration. The Supreme Court has stated that such language mandated arbitration, referring to a similar clause as "the standard form.' United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 80 S. Ct. 1343, 41 L. Ed. 2d 1403 (1960). In addition, the same language appeared in the agreements at issue in the Kansas City and La Crosse cases, where injunctions compelling arbitration were upheld.

Furthermore, the court finds in the facts presented the possibility of irreparable injury to the union. The consequences to union members of a termination of the agreement would be severe, including salary cuts, loss of benefits under the contract and loss of certain seniority privileges. Thus, the first of Inglis' alternate standards is met, as the court finds both probable success on the merits and the possibility of irreparable injury.

As to the request to preserve the contract terms pending negotiations, the court finds that success on the merits is probable. During arbitration or negotiations for a new agreement the existing terms of the collective bargaining

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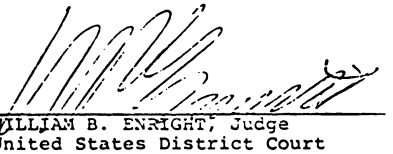
agreement stay in effect. The collective bargaining agreement itself provides that it shall remain in full force during negotiations for a new agreement, and the 13(c) contract preserves existing rights under the collective bargaining agreement. In addition, there is a possibility of irreparable injury if the contract terms are not continued because of the threatened loss of salary and other contract benefits. Thus the first Inglis test is met.

In ruling on the temporary restraining order the court found that the second of Inglis' two tests was met and this is also the case now. Serious questions as to the enforceability of certain contract provisions are raised. These questions are serious not only for the parties but also for the public which has an interest in the reliability and continued service of the bus lines. In addition, the balance of hardships tips sharply in plaintiff's favor. The preliminary injunction will be of limited duration. Yet the consequences to plaintiff of a salary cut and loss of benefits are much more difficult for it to bear than the concomitant burden on defendant of continuing for a brief period longer a collective bargaining agreement to which it unquestionably agreed.

In sum, the court believes that the employer, having entered into the 13(c) agreements as a condition of receipt of federal funds, and after receipt of substantial amounts of money pursuant to this arrangement, cannot now seek to avoid its obligations under that contract. For the reasons set forth above, the court grants the dual relief sought by plaintiff.

DATED: January 9, 1979.



WILLIAM B. ENRIGHT, Judge
United States District Court

Copies to:
Plaintiff
Defendant

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Senator LUGAR. We now call on Alice Rivlin, Director of the Congressional Budget Office, for her testimony. We will attempt to proceed with the testimony.

Dr. Rivlin, it's always good to have you appear before the subcommittee. My understanding is that you have testimony on the 504—the section 504 question, and we would be pleased to receive it.

STATEMENT OF ALICE RIVLIN, DIRECTOR, CONGRESSIONAL BUDGET OFFICE, ACCOMPANIED BY DAMIAN KULASH AND DAVID LEWIS

Dr. RIVLIN. Thank you, Mr. Chairman.

I have with me today two colleagues, Damian Kulash, on my right; and David Lewis, on my left. Damian is the Deputy Assistant Director in charge of our transportation analysis, and David Lewis did the work on our report on section 504.

Mr. Chairman, I'm happy to be with you today, to discuss Federal regulations covering public transportation for handicapped persons.

These regulations have been the subject of much discussion by the previous Congress, as well as the previous administration. In spite of these discussions, the issue was never resolved because the previous Congress never completed its action on the transit bill. A major decision will probably be made during this session of Congress.

In my comments today, I will discuss three aspects of this issue: how the current set of regulations evolved; the costs and benefits of alternative forms of public transportation for handicapped persons; and the amount of flexibility to be granted to States and localities to develop their own solutions to the problems of transporting handicapped people.

In particular, I will examine the provisions of the amendment proposed last week by the administration.

Mr. Chairman, if you are pressed for time, I might skip over some sections of this.

Senator LUGAR. Yes. If you would do so, we would appreciate that. Obviously, the entire statement will be put in the record in full.

Dr. RIVLIN. Let me skip to page 3, because I think the committee is probably quite familiar with the development of the current regulations.

COSTS AND BENEFITS OF ALTERNATIVE SERVICES

Turning to the costs and benefits of alternative services, only a small fraction of the Nation's handicapped persons are unable to use conventional public transportation, although the problem of transporting these persons is nonetheless substantial. About 26 million people living in urban areas in the United States are classified as handicapped, but 21 million of them are physically able to use public transportation without pain or difficulty, or live in areas where no public transportation is available.

Approximately 5 million handicapped persons live near transit, but find it difficult or impossible to use. Most of these have relatively minor difficulties that could be substantially alleviated by

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inexpensive modifications such as lower step heights, more handrails aboard vehicles, and the like. There are, however, a little over 1 million physically disabled, blind, or deaf persons who live within a short walk of transit service, but find it physically impossible to use. Of these, the most severe problems are encountered by about 409,000 wheelchair users whose handicap poses exceptional problems for bus and subway operators attempting to serve them.

Two general methods for transporting handicapped persons deserve special attention. One approach is to adapt existing public transportation services so that they are accessible to all persons, and in particular persons using wheelchairs. This means adding lifts to buses and constructing elevators in subway stations. This is the approach taken by the existing DOT regulations. The other general approach is to offer specialized services that are designed to meet the unique needs of handicapped persons. For example, special lift-equipped vans are used in many localities to transport wheelchair users to medical facilities. Similar services could be offered to serve wheelchair users in their travel needs generally. In addition, many less severely handicapped persons who cannot use buses and subways could benefit through programs making taxi services more affordable to them.

In a report prepared in November 1979, for the Senate Budget Committee and the Transportation Subcommittee of the House Public Works and Transportation Committee, CBO examined the costs and effectiveness of specialized services, and of adaptions to existing fixed-route services. It found that specialized services could be provided for about $9 a trip, about one-fifth of the cost of adapting fixed-route transit systems, which on average runs to $44 per trip. In addition, far more handicapped people could use specialized services. Nationwide, about 363,000 persons could use specialized services, more than three times the number of handicapped persons who would use adapted fixed-route services. Even serving this much larger clientele, a nationwide program of specialized services would cost, on average, about $180 million a year for the next 30 years, well beneath the corresponding cost of $260 million a year for adapted fixed-route services.

These costs are shown in the table on page 6 of my written testimony.

Why are fixed-route modifications so costly? The answer lies partly in the high capital costs involved in adding elevators and related equipment to subway stations—about $2.4 million per station. It also lies partly in the costs of bus lifts, which can run about $17,000 per vehicle, as well as in the cost of additional buses needed to replace part of the seating that is lost on lift-equipped buses, and the cost of the additional maintenance required. Together, these bus costs amount to $208 million per year.

The high costs of adapting fixed-route systems lead to extremely high costs per additional trip, since relatively few new trips would be made as a result of these modifications. Experience to date in several U.S. cities that operate accessible fixed-route systems shows very low patronage among handicapped persons, and surveys of handicapped persons indicate that fixed-route adaptations would generate little additional patronage, as compared with the number who would use specialized services.

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The relatively economical performance of specialized services stems largely from the fact that most such trips can make use of existing taxi services, which cost about $4.50 per trip. Less than half would need more expensive lift-equipped van services, which cost around $20 per trip.

In spite of the relative inefficiency of fixed-route adaptations in serving handicapped persons, some have argued that they are worthwhile in the long run because, once the costs of capital improvements have been absorbed, the services will have relatively low operating costs. The CBO analysis found that this was not the case. The continuing replacement of lift-equipped buses, their reduced seating capacity, and their additional maintenance costs cause travel by fixed-route services to cost about $37 a trip, excluding one time capital costs. This is four times the cost per trip for specialized services, computed on a corresponding basis.

There has been widespread concern among transit operators and local governments over the existing regulations, particularly over their inflexible stress on adding lifts and elevators to fixed-route systems when specialized services offer lower costs and greater benefits. Because the previous Congress did not act on the transit bill before the session closed, the question once again arises as to how to reshape the existing regulations so as to permit localities to be more responsive to the needs of their handicapped citizens, bearing in mind the costs and benefits of alternative services.

Senator LUGAR. Before you launch into the possible alternatives, at this point the Chair would like to recess the hearing for about 10 minutes. Senator Williams and I will be as speedy as possible in casting our votes, and then we will return immediately to hear your testimony and that of the panel that follows.

We apologize for this intrusion into the hearing, but the hearing is recessed for 10 minutes.

[Recess.]

ASPECTS OF LOCAL CHOICE

Senator LUGAR. The hearing will come to order. We will proceed with the testimony of Dr. Rivlin.

Dr. RIVLIN. Talking about local choice, the proposals considered during the last session focused on three aspects of local choice:

The minimum level of fixed-route adaptations, such as bus lifts and station elevators, that should be required;

The service criteria that specialized services would have to meet in order to be acceptable as alternatives to fixed-route services; and

The process by which local plans for specialized services were to be developed and approved.

As regards the first—the minimum level of fixed-route adaptation—CBO found that mixtures of specialized services and lift-equipped fixed-route services were generally redundant and inefficient. Requiring that, in all cities, some minimum proportion of buses or rail stations be made accessible to wheelchairs appears to be a cumbersome and inefficient approach. Generally speaking, proposals that grant a locality complete exemption from regulations governing fixed-route adaptation, if it provides adequate specialized services, will enhance the development of specialized services that are useful and efficient.

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The amendment recently proposed by the administration would not require a locality to make any fixed-route adaptations if it provides an acceptable set of specialized services. Thus, the risk of duplicative services under this approach would be minimal.

The second aspect—the specification of detailed service criteria—will probably be a subject of extensive discussion during this Congress. It is worth taking a few minutes to focus on several characteristics of service for which minimum criteria might be warranted. I will simply list them at this time:

Advance request time for door-to-door service;
Preregistration for specialized service;
Restrictions on trip purposes;
Hours of service; and
Trip time and transfer frequency.

The service offered to nonhandicapped persons using fixed-route systems cannot be completely and objectively equated with the specialized services offered to handicapped persons. Each type of service has unique features, and Federal legislation cannot design detailed service criteria that are appropriate for each traveler's circumstances and for each local setting. Nevertheless, some criteria that set minimum acceptable conditions could insure that adequate consideration was given by transit operators to various service characteristics. For example, the bill passed by the House during the previous session required that fares, service areas, and hours of service of specialized services be comparable to those of fixed-route transit; that no restrictions be made on trip purpose; and that advance request times be 6 hours or less. Even more stringent criteria were contained in the bill passed by the Senate during the last session. This bill required that specialized services be no less beneficial than fixed-route systems, required reasonable minimum waiting periods, and banned restrictions on trip purpose, preregistration of patrons, and the use of waiting lists.

The amendment proposed by the administration sets no specific service criteria. Rather, it requires that local areas develop and meet their own criteria for each of nine characteristics: fares, frequency of service, hours of service, restrictions on trip purpose, advance request time, waiting lists, trip time, transfer frequency, and geographic area of service.

This approach grants complete flexibility to local areas in designing and meeting these criteria. By enumerating the nine characteristics of service for which criteria are to be developed and met, the amendment initiates a comprehensive local evaluation of the practical issues involved. But by not setting any minimum acceptable criteria, it fails to provide any specific guarantees to handicapped persons.

In effect, the administration amendment not only gives local governments the choice of how to provide public transportation of handicapped persons, but also gives them the choice of whether to provide such services. If the intent is to insure that useful transportation is provided to handicapped persons, then including some specific criteria in the bill would help to guarantee that local governments take appropriate actions.

For example, Federal legislation could require that fares, service areas, and hours of service of specialized services be comparable to

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those of transit. Similarly, it could require that specialized services not be restricted on the basis of trip purpose. Legislation could also set criteria for other characteristics, notably a minimum advance request time, comparable trip time, or comparable transfer frequency, although variations in local circumstances make it difficult to set meaningful nationwide criteria for these characteristics.

This brings us to the third aspect of the current discussion—namely, the process by which local plans are to be developed and approved.

One approach applied in the bill that passed the Senate during the last session was to require that plans submitted by localities provide service no less beneficial for handicapped persons than those that would have been implemented under the DOT regulations. Judgments as to the interpretation of this criterion were to be made by DOT and the Architectural and Transportation Barriers Compliance Board. This double-approval process appears cumbersome and might lead some localities into costly and time-consuming judicial review.

In contrast, the bill that passed the House during the last session delineated a checklist of specific criteria by which the Secretary of Transportation, in consultation with the Architectural and Transportation Barriers Compliance Board, would judge the admissibility of local plans. It appears more streamlined than the preceding alternative, and is more likely to encourage localities to submit plans that they feel are appropriate.

The approach proposed by the administration is even more streamlined in this respect. It requires only that the locally developed criteria for service must be generated using a public hearing and amendment process that compares the characteristics of specialized services to those of fixed-route services used by the general public.

In conclusion, Mr. Chairman, the administration's proposal grants very broad latitude to local governments to make policy regarding public transportation for their handicapped citizens. Many localities will probably avail themselves of this flexibility and offer specialized transportation services.

Others will add elevators to their subway stations or lifts to their buses. This option will be chosen by some localities because current Federal financing mechanisms, which support most of the capital costs of lifts but little of the operating costs of specialized services, will lead some localities to favor adaption of fixed routes regardless of their combined Federal-plus-local cost consequences. Finally, some localities may choose service criteria that require them to do virtually nothing. The Congress could guard against this possibility by requiring that specialized services have comparable fares, service area, and hours of service, and by prohibiting restrictions based on trip purpose.

Thank you, Mr. Chairman. I would be happy to answer any questions.

[Dr. Rivlin's statement follows:]

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STATEMENT OF ALICE M. RIVLIN
DIRECTOR, CONGRESSIONAL BUDGET OFFICE

Mr. Chairman, I am happy to be with you today to discuss federal regulations governing public transportation for handicapped persons. These regulations have been the subject of much discussion by the previous Congress as well as the previous Administration. In spite of these discussions, the issue was never resolved because the previous Congress never completed its action on the transit bill. A major decision will probably be made during this session of the Congress. In my comments today, I will discuss three aspects of this issue:

- How the current set of regulations evolved;
- The costs and benefits of alternative forms of public transportation for handicapped persons; and
- The amount of flexibility to be granted to states and localities to develop their own solutions to the problems of transporting handicapped people. In particular, I will examine the provisions of the amendment proposed last week by the Reagan Administration. 1/

Development of Current Regulations

As part of the Rehabilitation Act of 1973, the Congress enacted Section 504 in order to help disabled persons free themselves from isolation, unemployment, poverty, and discrimination. Section 504 is brief and general. It states only that:

1/ Letter sent from Secretary of Transportation Drew Lewis to the President of the Senate, George Bush, May 11, 1981.

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> no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. 2/

In July 1979, the Department of Transportation (DOT) issued regulations that defined how Section 504 would apply to public transportation programs. These DOT regulations still apply, although some temporary flexibility was granted to localities through the Appropriations Act of 1981. 3/ The DOT regulations require that:

- All new buses purchased must be equipped with lifts, ramps, or other features that enable wheelchair users to ride them;
- About 40 percent of all subway, commuter rail, and trolley stations that are designated as key stations must be equipped with elevators during the next 20 to 30 years;
- At least one car per train on subway and commuter rail systems must be adapted to allow wheelchair users to board. Half the fleet of trolleys must be accessible within 20 years; and
- Starting in three years, most cities must make available some form of temporary service (like fitting lifts to old buses, or supplying some form of temporary taxi service).

2/ Public Law 93-112, 93d Congress, HR 8070, September 26, 1973.

3/ 96-400, Section 324, Department of Transportation and Related Agencies Appropriations Act of 1981 (the "Stenholm Amendment").

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The regulations also permit operators of existing subway, trolley, or commuter rail systems to provide handicapped persons with some form of van or taxi service instead of adapting the rail system, if local handicapped persons and DOT agree to the alternative plan. No such exemptions are provided for in the case of the bus regulations.

While estimates vary, all available estimates of the costs of the DOT regulations show that they have substantial costs. These high costs have led many to question whether the existing regulations implement a civil right that must be protected irrespective of its costs and benefits. If the Congress determines that equality of access is primarily a civil rights issue, then the existing regulations may be an appropriate response. If, instead, the Congress views this as a question of how to provide useful and efficient forms of public transportation to handicapped persons, then it will need to weigh the costs and benefits of different forms of public transportation.

Costs and Benefits of Alternative Services

Only a small fraction of the nation's handicapped persons are unable to use conventional public transportation, although the problem of transporting these persons is nonetheless substantial. About 26 million persons

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living in urban areas in the United States are classified as handicapped, but 21 million of them are physically able to use public transportation without pain or difficulty, or live in areas where no public transportation is available. Approximately 5 million handicapped persons live near transit but find it difficult to use; most of these have relatively minor difficulties that could be substantially alleviated by inexpensive modifications such as lower step heights, more handrails aboard vehicles, and the like. This leaves a little over 1 million physically disabled, blind, or deaf persons who live within a short walk of transit service but cannot physically use it. Of these, the most severe problems are encountered by about 409,000 wheelchair users whose handicap poses exceptional problems for bus and subway operators attempting to serve them.

Two general methods for transporting handicapped persons deserve special attention. One approach is to adapt existing public transportation services so that they are accessible to all persons, and in particular persons using wheelchairs. This means adding lifts to buses and constructing elevators in subway stations. This is the approach taken by the existing DOT regulations. The other general approach is to offer specialized services that are designed to meet the unique needs of handicapped persons. For example, special lift-equipped vans are used in many localities to transport wheelchair users to medical facilities. Similar services could be

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offered to serve wheelchair users in their travel needs generally. In addition, many less severely handicapped persons who cannot use buses and subways could benefit through programs making taxi services more affordable to them.

In a report prepared in November 1979, for the Senate Budget Committee and the Transportation Subcommittee of the House Public Works and Transportation Committee, CBO examined the costs and effectiveness of specialized services and of adaptations to existing fixed-route services. 4/ It found that specialized services could be provided for about $9 a trip, about a fifth of the cost of adapting fixed-route transit systems, which on average runs to $44 per trip (see Table 1). In addition, far more handicapped people could use specialized services. Nationwide, about 363,000 persons could use specialized services, more than three times the number of handicapped persons who would use adapted fixed-route services. Even serving this much larger clientele, a nationwide program of specialized services would cost, on average, about $180 million a year for the next 30 years, well beneath the corresponding cost of $260 million a year for adapted fixed-route services.

4/ Congressional Budget Office, Urban Transportation for Handicapped Persons: Alternative Federal Approaches, November 1979. All estimates of cost cited in this testimony have been drawn from this report, but updated to March 1981 dollars.

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TABLE 1. PROJECTED PATRONAGE AND COSTS OF TWO OPTIONS FOR TRANSPORTING HANDICAPPED PERSONS

Option	Number of Wheelchair Users and Other Severely Disabled Persons Able to Travel More	Percent of All Severely Disabled Persons Served	Annual Net Public Cost Averaged Over the First 30 Years	Total Net Public Cost Per Additional Trip Made	Annual Net Public Cost Per Additional Trip Made Excluding One-Time Capital Expenses a/
DOT Regulations	103,600	7	$260 million	$ 44	$ 37
Specialized Services	363,000	26	$180 million	$ 9	$ 9

SOURCE: Congressional Budget Office, Urban Transportation for Handicapped Persons: Alternative Federal Approaches (November 1979), p. xv. All cost figures have been converted to March 1981 dollars.

a/ Based upon all additional trips made by wheelchair users and other severely disabled persons.

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Why are fixed-route modifications so costly? The answer lies partly in the high capital costs involved in adding elevators and related equipment to subway stations-- about $2.4 million per station. It also lies partly in the costs of bus lifts, which run about $17,000 per vehicle, as well as in the cost of additional buses needed to replace part of the seating that is lost on lift-equipped buses, and the cost of the additional maintenance required. Together, these bus costs amount to $208 million per year. The high costs of adapting fixed-route systems lead to extremely high costs per additional trip, since relatively few new trips would be made as a result of these modifications. Experience to date in several U.S. cities that operate accessible fixed-route systems shows very low patronage among handicapped persons, and surveys of handicapped persons indicate that fixed-route adaptations would generate little additional patronage as compared with the number who would use specialized services.

The relatively economical performance of specialized services stems largely from the fact that most such trips can make use of existing taxi services, which cost about $4.50 per trip. Less than half would need more expensive lift-equipped van services, which cost around $20 per trip.

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In spite of the relative inefficiency of fixed-route adaptations in serving handicapped persons, some have argued that they are worthwhile in the long run because, once the costs of capital improvements have been absorbed, the services will have relatively low operating costs. The CBO analysis found that this was not the case. The continuing replacement of lift-equipped buses, their reduced seating capacity, and their additional maintenance costs cause travel by fixed-route services to cost about $37 a trip, excluding capital costs. This is four times the cost per trip for specialized services, computed on a corresponding basis.

There has been widespread concern among transit operators and local governments over the existing regulations, particularly over their inflexible stress on adding lifts and elevators to fixed-route systems when specialized services offer lower costs and greater benefits. Because the previous Congress did not act on the transit bill before the session closed, the question once again arises as to how to reshape the existing regulations so as to permit localities to be more responsive to the needs of their handicapped citizens, bearing in mind the costs and benefits of alternative services.

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Aspects of Local Choice

The proposals considered during the last session focused on three aspects of local choice:

- The minimum level of fixed-route adaptations, such as bus lifts and station elevators, that should be required,
- The service criteria that specialized services would have to meet in order to be acceptable as alternatives to fixed-route services, and
- The process by which local plans for specialized services were to be developed and approved.

As regards the first--the minimum level of fixed-route adaptation--CBO found that mixtures of specialized services and lift-equipped fixed-route services were generally redundant and inefficient. Requiring that, in all cities, some minimum proportion of buses or rail stations be made accessible to wheelchairs appears to be a cumbersome and inefficient approach. Generally speaking, proposals that grant a locality complete exemption from regulations governing fixed-route adaptation if it provides adequate specialized services will enhance the development of specialized services that are useful and efficient. The amendment recently proposed by the Reagan Administration would not require a locality to make any fixed-route adaptations if it provides an acceptable set of specialized services. Thus, the risk of duplicative services under this approach would be minimal.

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The second aspect--the specification of detailed service criteria--will probably be a subject of extensive discussion during this Congress. It is worth taking a few minutes to focus on several characteristics of service for which minimum criteria might be warranted:

1. Advance Request Time for Door-to-Door Service. Existing specialized services vary widely--from two hours to one week-- in the time a passenger must wait to be fetched after making a phone call for service. Spur-of-the-moment decisions to shop or to visit friends become impossible if requests must be made far in advance. Surveys indicate that about 80 percent of handicapped persons find a 24-hour advance reservation to be satisfactory (because it is convenient to plan many trips ahead of time, such as going to work, to school, or to the doctor). But surveys also suggest that more use would be made of special transportation if short-notice services were available as well.

2. Preregistration for Specialized Service. A bill considered by the Senate during the previous session would have banned any requirement for prior registration or prior approval of handicapped persons wishing to use public transportation. The ban may have stemmed from the desire to make specialized services no more cumbersome and no less convenient than regular transit, particularly for out-of-town patrons. But prohibiting advance registration eliminates the most practical way of restricting high-quality and high-cost door-to-door service to severely disabled persons who cannot use conventional transit. Other techniques for controlling eligibility have serious drawbacks. For example, drivers could be empowered to decide as to each passenger's eligibility, but this might be difficult in the case of severely disabled persons who do not use wheelchairs. Alternatively, eligibility might be based on evidence of registration for other services, such as the presentation of a Medicare card. But handicaps that qualify persons for various medical programs may not limit their ability to use transit. Lacking a mechanism by which to restrict eligibility, the costs of specialized services would climb prohibitively.

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3. Restrictions on Trip Purposes. Many existing specialized services carry handicapped persons only when they wish to go to work, to school, or to the doctor, and not for shopping or other activities unless a vehicle happens to be available when they wish to travel. For specialized services offered under Section 504, such restrictions would be inappropriate if the objective is to offer services capable of meeting the general travel needs of handicapped persons.

4. Hours of Service. While late-night and weekend transit services operate in many cities, specialized services for handicapped persons often cease by early evening and on weekends.

5. Trip Time and Transfer Frequency. Door-to-door service operators sometimes collect a number of passengers before delivering them to their destinations and require numerous transfers between vehicles so as to reduce the time any single vehicle spends returning empty. Such practices add to passengers' travel time, however, and are particularly onerous for disabled persons.

As is apparent from my discussion of these five attributes of service, the service offered to non-handicapped persons using fixed-route systems cannot be completely and objectively equated with the specialized services offered to handicapped persons. Each type of service has unique features, and federal legislation cannot design detailed service criteria that are appropriate for each traveller's circumstances and for each local setting. Nevertheless, some criteria that set minimum acceptable conditions could ensure that adequate consideration was given by transit operators to various service characteristics. For example, the bill passed by the House during the previous session required that fares, service areas, and hours of service of specialized services be comparable to those of fixed-route transit, that no

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restrictions be made on trip purpose, and that advance request times be six hours or less. Even more stringent criteria were contained in the bill passed by the Senate during the last session. This bill required that specialized services be "no less beneficial" than fixed-route systems, required "reasonable minimum waiting periods," and banned restrictions on trip purpose, preregistration of patrons, and the use of waiting lists.

The amendment proposed by the Reagan Administration sets no specific service criteria. Rather, it requires that local areas develop and meet their own criteria for each of nine characteristics: fares, frequency of service, hours of service, restrictions on trip purpose, advance request time, waiting lists, trip time, transfer frequency, and geographic area of service. This approach grants complete flexibility to local areas in designing and meeting these criteria. By enumerating the nine characteristics of service for which criteria are to be developed and met, the amendment initiates a comprehensive local evaluation of the practical issues involved. But by not setting any minimum acceptable criteria, it fails to provide any specific guarantees to handicapped persons.

In effect, the Reagan amendment not only gives local governments the choice of how to provide public transportation of handicapped persons, but also gives them the choice of whether to provide such services. If the

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intent is to ensure that useful transportation is provided to handicapped persons, then including some specific criteria in the bill would help to guarantee that local governments take appropriate actions. For example, federal legislation could require that fares, service areas, and hours of service of specialized services be comparable to those of transit. Similarly, it could require that specialized services not be restricted on the basis of trip purpose. Legislation could also set criteria for other characteristics, notably a minimum advanced request time, comparable trip time, or comparable transfer frequency, although variations in local circumstances make it difficult to set meaningful nationwide criteria for these characteristics.

This brings us to the third aspect of the current discussion, namely, the process by which local plans are to be developed and approved. One approach applied in the bill that passed the Senate during the last session was to require that plans submitted by localities "provide service no less beneficial for handicapped persons" than those that would have been implemented under the DOT regulations. Judgments as to the interpretation of this criterion were to be made by DOT and the Architectural and Transportation Barriers Compliance Board. This double-approval process appears cumbersome, and might lead some localities into costly and time-consuming judicial review.

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In contrast, the bill that passed the House during the last session delineated a checklist of specific criteria by which the Secretary of Transportation, in consultation with the Architectural and Transportation Barriers Compliance Board, would judge the admissibility of local plans. It appears more streamlined than the proceeding alternative, and is more likely to encourage localities to submit plans that they feel are appropriate.

The approach proposed by the Reagan Administration is even more streamlined in this respect. It requires only that the locally developed criteria for service must be generated using a public hearing and amendment process that compares the characteristics of specialized services to those of fixed-route services used by the general public.

Conclusion

The Administration's proposal grants very broad latitude to local governments to make policy regarding public transportation for their handicapped citizens. Many localities will probably avail themselves of this flexibility and offer specialized transportation services. Others will add elevators to their subway stations or lifts to their buses. This option will be

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chosen by some localities because current federal financing mechanisms, which support most of the capital costs of lifts but little of the operating costs of specialized services, will lead some localities to favor adaption of fixed routes regardless of their combined, federal-plus-local, cost consequences. Finally, some localities may choose service criteria that require them to do virtually nothing. The Congress could guard against this possibility by requiring that specialized services have comparable fares, service area, and hours of service, and by prohibiting restrictions based on trip purpose.

Thank you, Mr. Chairman. I would be happy to answer any questions.

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Senator LUGAR. Thank you very much, Dr. Rivlin, for your testimony. I think that offers an excellent analysis of alternatives and, likewise, the costs—at least that you have found in your office—of various policies. It will be a very useful part of our record.

I have no further questions of you or your associates, but I will turn to my colleague, Senator Williams.

Do you have questions of Dr. Rivlin?

Senator WILLIAMS. Yes.

There is a reservation in your statement, I believe, with the proposal in this area advanced by the administration—or maybe that is overstating it—but to say virtually without standards for alternative services.

Dr. RIVLIN. The administration amendment does leave it entirely to the discretion of the locality. It mandates a process for localities arriving at decisions, but does not incorporate specific criteria.

Senator WILLIAMS. Have you examined any other proposals that go to alternate services, but do incorporate standards or criteria?

I think that Chairman Garn has some proposals.

MINIMUM STANDARDS FOR SPECIALIZED SERVICES

Dr. RIVLIN. Yes. Senator Garn has suggested that the Congress guarantee four basic minimum standards for these specialized services: That fares be equal to bus fares;

That the geographic range of services be comparable to bus services; that the hours of service; that the hours of service be comparable; and that there be no restrictions on the purpose of the trip.

That would move a considerable distance toward defining a minimum standard.

Senator WILLIAMS. I wonder if, in those criteria, shouldn't we also look at the actual time and transfer frequency of a trip, so that a trip that took hours to complete, or involved several inconvenient transfers, wouldn't be considered adequate service when compared to the much more rapid and direct service on the regular transit system?

Dr. RIVLIN. That is certainly possible. It's much harder to write a regulation that specifies what is "too much."

Senator WILLIAMS. There are ways, though, to direct people's attention to that. Am I right?

The comparison of time factor?

Dr. RIVLIN. Yes. You could certainly do that.

Senator WILLIAMS. But at any rate, did your statement include any judgment as to the inadequacy of meeting this particular transit need of handicapped people that is in the proposal that was introduced for the administration?

Dr. RIVLIN. It is hard to say what would happen under the administration's proposal. We simply said that it does leave the definition of what is an adequate service to the locality.

Senator WILLIAMS. Thank you, Mr. Chairman.

Senator LUGAR. Thank you, Senator Williams.

Thank you, Dr. Rivlin, for coming today. We appreciate it.

Dr. RIVLIN. Thank you, Mr. Chairman. If there is anything else that we can do for the committee, let us know.

Senator LUGAR. Thank you.

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The Chair now calls a panel of: Reese Robrahn, the executive director of the American Coalition of Citizens with Disabilities, in Washington, D.C.; and Kay Neil of Overcoming Mobility Barriers International, Inc., of Omaha, Nebr.

We welcome the witnesses, who have come to participate in this discussion of the section 504 proposals that are required in the mass transit legislation.

The Chair would like to call on Mr. Robrahn, and then Ms. Neil, in order.

At this time, Mr. Robrahn, would you please proceed.

STATEMENT OF REESE ROBRAHN, EXECUTIVE DIRECTOR, AMERICAN COALITION OF CITIZENS WITH DISABILITIES, ACCOMPANIED BY VINCENT G. MACALUSO, ASSISTANT DIRECTOR, AND JOHN WILLIAMS, PUBLIC RELATIONS DIRECTOR

Mr. ROBRAHN. Thank you, Mr. Chairman, and Senator Williams. We appreciate the fact that we have had the opportunity to appear and testify today.

I represent in this testimony the American Coalition of Citizens with Disabilities, which is a nationwide coalition of organizations of and for disabled people, over 100 of them representing virtually every category of disability. I have with me today Vince Macaluso, who is the assistant director, and also John Williams, who is the public relations director for ACCD, who is observing in the audience.

A major goal of the American Coalition of Citizens with Disabilities is the improvement of the economic, social and cultural well-being of the disabled men, women, and children of this Nation through the adoption and enforcement of our human and civil rights: The right to equal protection under the law; the right to equal opportunity in education and employment; the right to access to housing, to public transportation, and to places of public accommodation; and to information through appropriate media of communication; the right not to be discriminated against solely on the basis of disability or handicapping condition; the right to participate in the life and activities of our communities to the extent and potential of each individual. The disabilities and handicapping conditions of 36 million children and adults of this country do not, in any way, lessen, negate or destroy those rights for us as citizens.

Freedom of movement and mobility through access to transportation is an essential element to the success of a highly mechanized and technology oriented society such as ours. For mobility impaired members of our society, it is an absolute and indispensable element. We believe that disabled people have the right to public transportation services that are as effective for us as those provided to others.

EFFECTIVE, EFFICIENT TRANSIT SYSTEMS FOR ALL

Efficient public transportation that serves the needs of all people, including disabled people and that provides conservation of the country's energy resources cannot be delegated to the whims and vagaries of local authorities where effective transportation planning is stymied by contending jurisdictional agendas—the transportation coordinator's nightmare. Effective, efficient trans-

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portation systems for all, including handicapped people, requires strong national leadership which is committed to the goal of providing public transportation that is adequate and that serves the needs of all segments of the population.

Under Federal urban mass transit legislation of recent years, local transit authorities have been free to exercise their "local option" to provide transportation services to handicapped people. None chose to exercise that "local option." What special transportation services for handicapped people that existed were provided under authority of other Federal legislation.

The advent of the publication of the Department of Transportation's 504 regulations brought forth the hue and cry for "local option." The big stick so handy and available was and is cost, cost that is outrageously exaggerated and shamefully misrepresented.

For example: trip costs for handicapped persons were computed on the basis of trips by handicapped passengers on systems which were only partially accessible; one time annual contract costs of paratransit services for handicapped people were compared against total cost of long range multiyear programs to provide accessible mainline systems, thus misleading the public into believing that the 1 year contract cost for paratransit services is the total cost for that service and not an annual ongoing cost.

The truth of the matter is that special separate transportation services for disabled people provided under criteria to assure comparability to transportation services provided to the general public is more expensive by far than the cost of providing mainline fixed-route accessible services. This fact is established under research conducted by the Department of Transportation and independent researchers.

We have attached two exhibits, exhibit A and B, which demonstrate that fact, and I won't go into those at all at this time.

Section 108 of the legislation under consideration here today provides for local option without accompanying comparability criteria on the mere certification of a transit authority that it is providing or will be providing within 1 year special transportation services for handicapped persons. There is no requirement for mainline fixed route accessible service and no right of disabled people for transportation service comparable to that provided to others.

Section 504 and other Federal legislation is in effect repealed for the purposes of public transportation. Under section 108, the local transit authority will have a free hand to provide as little service for disabled citizens as it chooses and to those groups of disabled citizens whom it chooses to serve.

OPPOSITION TO SECTION 108

The American Coalition of Citizens with Disabilities vehemently opposes adoption of section 108 of this bill and calls upon this committee and the Congress to exercise that strong leadership so essential by affirming its conviction for the prohibition of discrimination against handicapped people as enunciated in section 504 of the Rehabilitation Act of 1973; thus requiring accessible mainline fixed route public transportation for disabled people and at the same time, permitting special separate services for those severely disabled people who cannot use mainline services.

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We urge the committee and the Congress not to tamper with section 504 by this legislation. Desirable changes, if needed, can more appropriately be provided through amendment of the regulations.

This section represents a total abandonment of the constitutional legislative authority. The Secretary of the Department of Transportation must presume compliance and accept certification as a ministerial act. There is no provision for a remedy, no review, and no accountability. A right without a remedy is no right at all. We respectfully urge defeat of section 108 for the reasons stated above, and further because it is an extraordinary and perhaps unconstitutional delegation of the legislative authority of the Congress to local transit authorities.

That is the end of my prepared statement, but I do have one or two comments that I would like to make and which I would like to become a part of the record. I make reference to the statement of the witness, Clarence Pendelton, as a demonstration of some of the misleading cost figures that are bandied about.

He made the statement that his transit company was purchasing new buses, five of which would have lifts which would cost $780,000, thus implying that the five lifts cost $780,000. That is not the cost of the lifts. That is the cost of the five buses with lifts.

I refer to the fact that the witness from the Congressional Budget Office gives credence to our concern that without any standard, the minimum standard for comparability, a local transit authority can provide whatever kind of services it wants to. Certainly 108 provides for a hearing and comment, but there is no assurance that the comments and the testimony offered at the hearing would be heeded.

There is no kind of remedy for enforcement of the rights of disabled people under this provision. We urge this committee and the Congress to give section 504 a chance to work. It works in communities who really want it to work and who make a bona fide effort to make it work, and I suggest that you take a look at the transit system in West Palm Beach, Fla., in Atlanta, Ga., and in Seattle, Wash.

And I will briefly mention some things about West Palm Beach, Fla., where it is a small transit company with 72 buses, all of them are lift-equipped. Over a period of 6 months the ridership of disabled people on those buses increased tremendously. There is a ridership of 129 wheelchairs per day in a total day passenger ridership of 14,000.

We do not have any figures on what they believe that it cost them to provide this service, but it is working magnificently there and therefore, we urge that you give 504 a chance so that there can be mainline accessibility and special services for severely handicapped people who need that kind of service and cannot use the mainline services, so that they will have that provided.

Thank you.

Senator LUGAR. Thank you very much, Mr. Robrahn. We appreciate your testimony. If you will remain there at the witness table after the testimony of Ms. Neil, perhaps the senators will have questions so we may continue our dialog.

Ms. Neil, may we have your testimony at this point?

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STATEMENT OF KAY NEIL, EXECUTIVE DIRECTOR, OVERCOMING MOBILITY BARRIERS INTERNATIONAL, INC.

Ms. NEIL. Thank you, Mr. Chairman, Senator Williams. I am pleased to be here to testify on this legislation.

I am the executive director of Overcoming Mobility Barriers International, Inc.

Senator LUGAR. Could you move your microphone a little closer? Thank you very much.

Ms. NEIL. I am the executive director of Overcoming Mobility Barriers International, Inc., an international nonprofit corporation. OMBI, Inc.'s primary purpose is to assist in the removal of barriers to mobility. Our membership is a mix of providers, consumers, government officials at all levels, handicapped and nonhandicapped persons and organizations, academia and nonacademia, and people with a genuine interest in our purpose. OMBI, Inc. supports the local option concept and the revision of the section 504 regulations for the Department of Transportation.

As a consumer and a person with a physical disability, I can speak with some assurances that other persons with disabilities across the country are interested in mobility. Let me explain some not so subtle differences. Some advocates of full accessibility state that it is their assurance of equality and protection of civil rights, but let me say that an accessible bus does not assure mobility. It assures access on the bus, but not to the bus.

Mobility means to be mobile, but if you can't leave your residence, or navigate in inclement weather, or over uneven terrain, and accessible bus is just that—an accessible bus. And accessible bus also provides a slot for a wheelchair, but protection of the rider is very definitely a question as well as the useability of that securement device. In fact, the reverse is true.

Within a disability is a large degree of ability difference depending upon the motivation, rehabilitation, and other supporting factors of that individual. That is to say that not every wheelchair user can do a wheelie or jump a curb.

Of the nation's population 13 percent is identified as handicapped. If the figures that have been recently communicated by some officials from the Department of Transportation at a recent Architectural and Transportation Barriers Complaince Board Transportation Committee meeting, some 500,000 to 600,000 persons are permanently confined to wheelchairs, but some 3 percent or so of that figure are identified as being able to navigate that chair under their own power. That excludes the power chair user and persons such as myself. Five to six times that figure are identified as the walking wounded—crutch, walker and cane users. The remaining number represent the developmentally disabled, mentally retarded, blind, deaf, epileptic, and other hidden disabilities.

TRANSPORTATION FOR THE HANDICAPPED

How do we serve these persons with transportation that really provides mobility? With a true local option, I submit. What do I mean? Let me explain.

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First, some givens—resources, specifically financial, are going to be slim, so we must be responsible with them. No one really dislikes paying a price for something if it works.

Also, resources such as equipment is another given. If the mandate to provide services to persons with disabilities is given to the local community, fiscal and physical resources are fairly easy to ascertain. A true local option is one which utilizes a variety of equipment—taxis for mobile persons such as the walking wounded, mentally retarded, epileptic, et cetera; lift equipped vans for wheelchairs and others needing a degree more assistance; and accessible buses for those who are able to use them.

Some version of the above may make up a suitable system. In addition, local option legislation should be encouraged to augment, support, and supplement existing charitable and volunteer services. They certainly should not curtail or duplicate them.

Funds expended should bring beneficial services to people, not support large overhead operations. Coordination is a real key and can assist in better use of funds.

It has been stated earlier in my presentation that advocates support equality of service. Those supporting accessible buses and paratransit systems that offer 24-hour demand response, no priority service are not asking for equality, they are asking for Utopia. It would seem that 24-hour response would be reasonable, but demand response without priority would not be recommended.

There are persons who have disabilities who need the service on a regular level to get to and from employment and educational opportunities. There are handicapped and elderly persons who need regular medical and theraputic sessions. This is not to say that grocery trips, personal, and social activities are not important, but need a lesser priority than those previously mentioned.

Service should be provided 7 days a week for as many hours as fiscally possible. An example, our local system, MOBY, provides service from 5:30 a.m. to 11:00 p.m., Monday through Friday. There is limited Saturday service from 8 a.m. to 5 p.m., and none on Sunday. The latter 2 days are not ideal, but it is better than nothing and they, the transit authority, are trying to change it. Service area is the entire city of Omaha, better than the existing bus service. Our system is operated by the city under its charter. Fares are near that of regular service—50 cents for the bus and 60 cents for MOBY.

Who needs the service? How do we determine that? Our transit authority provided a needs assessment survey to agencies, groups, and so forth, who have contacted handicapped persons plus public announcements. When the surveys were returned, they were tabulated, collated, and computerized. From these surveys maps with pickup and dropoff points were done. The culmination of these efforts were used as layovers for a larger map and the system was designed. Continued publicity occurred. The service is well received and well utilized.

CERTIFICATION OF RIDERSHIP

Certification of ridership is a simple process. Our system submits an application to a requestee for the service and upon return of the application, is issued a photo identification card.

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We have suggested some standards for service. Standards for service, delivery of service, and so forth, need to be set. However, it should not be based on a percentage of a budget for handicapped services. That only provides an identified, underlined loophole. Some properties could take advantage of such a loophole. Also, a sanction should be placed on that authority for noncompliance with these service requirements. A property that decides not to provide any or little service should be held accountable.

To summarize, service and mobility are keys. We must offer service that is usable, not service that protects our civil rights and offers us buses we can't reach, but service we can use. It must be a service I can use, not a system with a lift. But service paratransit, and so forth, will never, unfortunate as it sounds, never replace the independent mobility of your own car, no matter how we wish it could.

One last comment. We should all be responsible in our requests and our demands for service. Resources are limited, so let's get the "best bang for the buck."

Thank you.

[Complete statements of the witnesses follow:]

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1200 15th Street, N.W.
Suite 201
Washington, D.C. 20005

(202) 785-4265
785-4341 (TTY)

American Coalition of Citizens with Disabilities Inc.

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May 20, 1981

Reese Robrahn
Director

TESTIMONY OF THE AMERICAN COALITION OF CITIZENS WITH DISABILITIES

Before the

SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

on

§ 108 of S.1160

Presented by Reese Robrahn, Executive Director.

The American Coalition of Citizens with Disabilities is a nationwide organization of more than 100 organizations of and for disabled people representing all disability groups.

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Mr. Chairman and members of the Committee:

A major goal of the American Coalition of Citizens with Disabilities is the improvement of the economic, social and cultural well-being of the disabled men, women and children of this nation through the adoption and enforcement of our human and civil rights - the right to equal protection under the law, the right to equal opportunity in education and employment, the right to equal access to housing, public transportation and places of public accommodation, and to information through appropriate media of communication, the right not to be discriminated against solely on the basis of disability or handicapping condition, the right to participate in the life and activities of our communities to the extent of our individual potential. The disabilities and handicapping conditions of 36 million children and adults of this nation do not in any way lessen, negate or destroy those rights for us as citizens.

Freedom of movement and mobility through access to transportation is an essential element to the success of a highly mechanized and technology oriented society such as ours. For mobility impaired members of our society it is an absolute and indispensable element. We believe that disabled people have the right to public transportation services that are as effective for us as those provided to others.

Efficient public transportation that serves the needs of all people, including disabled people and that provides conservation of the country's energy resources cannot be delegated to the whims and vagaries of local authorities where effective transportation planning is stymied by contending jurisdictional agendas - the transportation coordinator's nightmare. Effective, efficient transportation systems for all, including handicappped people, requires strong national leadership

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which is committed to the goal of providing public transportation that is adequate and that serves the needs of all segments of the population.

Under Federal urban mass transportation legislation of recent years local transit authorities have been free to exercise their "local option" to provide transportation services to handicapped people. None chose to exercise that "local option". What special transportation services for handicapped people that existed were provided under authority of other federal legislation. The advent of the publication of the Department of Transportation's § 504 regulations brought forth the hue and cry for "local option". The big stick so handy and available was and is cost, cost that is outrageously exaggerated and shamefully misrepresented. For example: trip costs for handicapped persons were computed on the basis of trips by handicapped passengers on systems which were only partially accessible; one time annual contract costs of paratransit services for handicapped people were compared against total cost of long range multiyear programs to provide accessible mainline systems, thus misleading the public into believing that the one year contract cost for paratransit services is the total cost for that service and not an annual ongoing cost.

The truth of the matter is that special separate transportation services for disabled people provided under criteria to assure comparability to transportation services provided to the general public is more expensive by far than the cost of providing mainline fixed-route accessible services. This fact is established under research conducted by the Department of Transportation and independent researchers (see exhibits A and B attached).

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Section 108 of the legislation under consideration here today provides for "local option" without accompanying comparability criteria on the mere certification of a transit authority that it is providing or will be providing within one year special transportation services for handicapped persons. There is no requirement for mainline fixed route accessible service and no right of disabled people for transportation service comparable to that provided to others. § 504 and other Federal legislation is in effect repealed for the purposes of public transportation. Under § 108 the local transit authority will have a free hand to provide as little service for disabled citizens as it chooses and to those groups of disabled citizens whom it chooses to serve.

The American Coalition of Citizens with Disabilities vehemently opposes adoption of § 108 of this Bill and calls upon this Committee and the Congress to exercise that strong leadership so essential by affirming its conviction for the prohibition of discrimination against handicapped people as enunciated in § 504 of the Rehabilitation Act of 1973; thus requiring accessible mainline fixed route public transportation for disabled people and at the same time, permitting special separate services for those severely disabled people who cannot use mainline service.

We urge the Committee and the Congress not to tamper with § 504 by this legislation. Desirable changes, if needed, can more appropriately be provided through amendment of the regulations.

This section represents a total abandonment of the constitutional legislative authority. The Secretary of the Department of Transportation must presume

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compliance and accept certification as a ministerial act. There is no provision for a remedy, no review and no accountability. A right without a remedy is no right at all. We respectfully urge defeat of § 108 for the reasons stated above, and further because it is an extraordinary and perhaps unconstitutional delegation of the legislative authority of the Congress to local transit authorities.

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6/9/80

DEPARTMENT OF TRANSPORTATION

COMMENTS ON ACCESSIBLE MAINLINE TRANSPORTATION
FOR HANDICAPPED PERSONS

Summary

This Administration and this Department support section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against handicapped persons in programs receiving federal financial assistance. Where programs receive federal assistance, handicapped persons should be able to use those programs. When the Department of Transportation provides grants for the operation of mass transit systems, handicapped persons should be able to use such mainline systems. They should not be required to ride in separate, "special systems."

Moreover, it is much less expensive and more cost effective to make existing transportation systems accessible to handicapped persons than it is to create separate, special systems just to serve a small number of handicapped individuals with very limited transportation options. This is particularly true for fixed route bus systems, where the Department's section 504 regulation simply requires that when new buses are purchased for normal replacement purposes, those buses include lifts to assist handicapped persons in boarding. (Such lifts cost approximately $10,000 in new buses, of which the local cost share is 20 percent, or approximately $2,000.)

Whereas the lifts, once purchased, can be used for the 12- to 15-year life of the bus, separate, special systems have continuing high operating costs in addition to their initial capital costs. For example, the deficit for the City of Omaha's special services for handicapped persons is approximately $454,000 annually -- 11 percent of the city's UMTA section 5 grant funds. Moreover, these special systems typically do not provide service comparable to the main transit service, in that they have numerous restrictions in terms of hours of operation, geographic scope, waiting lists, trip purposes, advance reservation times, etc.

With respect to existing rail transit systems, where the cost of providing accessibility for handicapped persons will be relatively more expensive than for bus systems, the Department's regulation (1) permits accessibility to be achieved over a 30-year period, and (2) provides for a waiver of the accessibility requirement if the transit agency can demonstrate that it will provide alternate service to handicapped persons "as good as or better than" the service that would have been provided by making the rail system accessible.

Were the Department required to implement and enforce statutory provisions which would permit special service in lieu of accessible mainline service, it would necessitate a significant regulatory and enforcement effort to ensure that the required service standards for the special services were achieved on a continuing basis. By comparison, assuring that new buses purchased with federal grants include lifts, for example, is a much simpler and less intrusive regulatory responsibility. If local communities wish to provide special transportation services to handicapped persons as a supplement and complement to mainline accessible service, the Department encourages special services for such purposes, and mass transit grant funds can be utilized for these services.

Attached is more detailed information on these matters.

- end of summary -

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"Local Option". Many transit agencies and cities are arguing that if they were given "local option", they would find the best means of meeting the transportation needs of the handicapped members of their communities. However, local transit agencies have always had the option of providing special services for the handicapped, or of making mainline service accessible. Despite the enactment in 1970 of statutory language encouraging "special efforts" to provide transportation for the elderly and handicapped, few transit agencies opted to provide either special services or accessible mainline service. After UMTA promulgated regulations in 1976 requiring "special efforts", some transit operators began to provide special services, which have generally been quite limited in nature.

There is little reason to think that. if now given local option, transit agencies would generally begin to provide extensive special services, particularly with the high operating costs of such services, unless they are required to do so by tightly drawn and vigorously enforced regulations. As indicated above, our estimates are that special services would be more expensive, particularly in operating costs, and therefore--in practice--it would be extremely difficult to assure effective implementation.

Moreover, assuring year in and year out that the special services are meeting the standards that would be established (e.g., in terms of geographic availability, prior notification, comparable trip times, etc.) would be a task that would involve the Department in a major detailed enforcement responsibility that neither the Department, the localities, nor the handicapped community would want. By comparison, assuring that only accessible buses are ordered with UMTA grants, as required by the current 504 regulation, is a far simpler matter that is being made a part of the regular UMTA approval process for bus purchases. Assuring the continued operation of accessible mainline service will be a much easier task than assuring that all the parameters of "comparable" special services were maintained.

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SURVEY OF SPECIAL EFFORTS TRANSPORTATION

CITY	OPERATOR	SERVICE CHARACTERISTICS: TYPE OF SERVICE	FLEET SIZE	ELIGIBILITY	AREA*	FARE*	24 HR. RESERV.	OPERATING EXPENSE	ANNUA CAPIT	SERVICE COST ($1,000's): ANNUAL CAPITAL**	TOTAL ANNUAL COST	REVENUE	DEFICIT ***	FY'80 $5 APPMT. ****	DEFICIT AS % OF FY'80 $5
WORCESTER MASS.	Worcester Regional Transit Authority (WRTA)	Demand Responsive	5 Vans[1] with lifts	E&H[2]	Yes	Higher	1-7 da.	163	19.4	19.4	182.4	13.4	169	2,169	7.8%
ROCHESTER NEW YORK	Lift-Line (private for profit)	Demand Responsive and Subscriptica[3]	11 Vans with lifts 2 sedans	E&H	Yes	Yes	1-7 da.	485	92	92	577[4]	60	517	6,198	8.3%
READING PENNSYLVANIA	Berks Area Reading Transit Authority (BARTA)	Demand Responsive	34 Vans	T.H.[5]	Larger	Yes	3 da.	757	81.	81.8	838.8	12	826.8	1,722	48.0%
MINNEAPOLIS MINN	Metropolitan Transit Commission (MTC)	Demand Responsive	32 Vans (29 w/lifts)	T.H.[6]	80%[7]	Lower	Yes[8]	5,200	112	112	5,312[4]	200	5,112	15,326	33.4%
BLOOMINGTON ILLINOIS	Public Transit System (PTS)	Demand Responsive	2 Buses (1/w lift)	T.H.	Yes	Yes	Yes	88	7	7	95	16	79	658	12.0%
TOPEKA KANSAS	Metropolitan Transit Authority (MTA)	Demand Responsive	3 sm. buses with lifts	anyone (with T.H. priority)	Yes	Higher	Yes[8]	100	20.6	20.6	120.6	20	100.6	1,085	9.3%
OMAHA NEBRASKA	Metropolitan Transit Authority (MTA)	Demand Responsive	12 Vans with lifts	E&H	Yes	Approx. Equal	Mini-mum[8]	440	35	35	475	21	454	4,074	11.1%
COLORADO SPRINGS COLORADO	City of[9] Colorado Springs	Demand Responsive	15 vehicles 6 w/lifts/ ramps	E&H	Yes	Free	Yes	283.4	60	60	343.4	0	343	1,623	21.2%
EUGENE OREGON	Lane Co. Transit District (LTD)	Demand Responsive	6 sm. buses with lifts	T.H.	Yes	Higher	Yes	273	11	11	284	14	270	1,147	23.5%

FIXED ROUTE TRANSPORTATION

CITY	SERVICE CHARACTERISTICS: FLEET SIZE	SERVICE COSTS ($1,000's): TOT EST. ANNUAL. COST OF FLEET ACCESS. *****
WORCESTER MASS.	76	86
ROCHESTER NEW YORK	225	255
READING PENNSYLVANIA	49	56
MINNEAPOLIS MINN	1,007	1,141
BLOOMINGTON ILLINOIS	26	29
TOPEKA KANSAS	23	26
OMAHA NEBRASKA	183	207
COLORADO SPRINGS COLORADO	46	52
EUGENE OREGON	60	68

The information in this chart on ... was developed on the basi... authorities.

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:PLANATORY NOTES

Comparability to fixed route service.

' Based on purchase price of vehicles divided by anticipated useful life.

'* Deficit equals total cost less revenues. This does not imply the transit authority necessarily pays all the deficit.

'** Includes Tiers 1, 2, 3 and 4.

'*** These are the estimated incremental costs of full fleet accessibility based on the following conclusions reached by the Department in its rulemaking. Fixed route transit buses have a useful life of 12 years, although this life expectancy may in fact be longer. In full production, wheelchair lifts will add approximately $10,000 to the purchase price of a bus. After an initial break-in period where operating costs will be higher, the added operating cost for wheelchair accessible buses are estimated by DOT to be approximately $300 per bus annually (Peat, Marwick, Mitchell and Co. "The Cost of Making Urban Rail Transit Accessible to the Handicapped", Nov. 3, 1978, p. A-30).

OTNOTES

Supplemented by taxis.

E&H means service is available to elderly and handicapped persons.

Currently overloaded, has waiting list.

Estimated Cost for 1980.

T.H. means service is available to transportation handicapped persons.

. Elderly persons eligible for service when space available.

. Other 20% provided by county. MTC provides dispatching only for county.

. Subject to limitations due to trip priorities.

. Operation by contract with 3 private nonprofit agencies each serving a different clientele.

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Overcoming Mobility Barriers International, Inc.

1022 South 41st Street
Omaha, Nebraska 68105
Phone (402) 342-5658

My name is Mrs. Kay Neil and I'm the Executive Director of Overcoming Mobility Barriers International, Inc,, an international, non-profit corporation. OMBI, Inc.'s primary purpose is to assist in the removal of barriers to mobility. Our membership is a mix of providers, consumers, government officials at all levels, handicapped and non-handicapped persons and organizations, acedemia and non-acedemia, and people with a genuine interest in our purpose. OMBI, Inc. supports the local option concept and the revision of the Section 504 regulations for the Department of Transportation.

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Thirteen percent of the nation's population is identified as handicapped. If the figures that have been recently communicated by some officials from the Department of Transportation at a recent Architectural and Transportation Barriers Compliance Board Transportation Committee meeting, some 500,000 to 600,000 persons are permanently confined to wheelchairs, but some 3% or so of that figure are identified as being able to navigate that chair under their own power. That excludes the power chair user and persons such as myself. Five to six times that figure are identified as the "walking wounded" - crutch, walker, and cane users. The remaining number represent the developmentally disabled, mentally retarded, blind, deaf, epileptic, and other hidden disabilities.

How do we serve these persons with transportation that really provides mobility? With a true local option, I submit. What do I mean? Let me explain. First, some givens - resources, specifically financial are going to be slim so we must be responsible with them. No one really dislikes paying a price for something <u>if</u> it works. Also, resources such as equipment is another given. If the mandate to provide service to persons with disablities is given to the local community, fiscal and physical resources are fairly easy to ascertain. A true local option is one which utilizes a variety of equipment - taxis for mobile persons such as the walking wounded, mentally retarded, epileptic, etc.; lift equipped vans for wheelchairs and others needing a degree more assistance; and accessible buses for those who are able to use them. Some version of the above may make up a suitable system. In addition, local option legislation should be encouraged to augment, support, and supplement existing charitable and

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To summarize, service and mobility are the keys. We must offer service that is useable, not service that protects our civil rights and offers us buses we can't reach, but service we can use. It must be a service I can use, not a system with a lift. Bus service, paratransit, etc. will never, unfortunate as it sounds, never replace the independent mobility of your own car - no matter how we wish it could! One last comment, we should all be responsible in our requests and our demands for service. Resources are limited so let's get the "best bang for the buck!"

Thank you.

Kay Neil

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Senator LUGAR. Thank you very much, Ms. Neil.

Just for my own information, could you describe in greater detail from your own personal use of the MOBY service precisely how it works? For instance, what calls do you place upon it, and specifically what happens when a call comes in?

OPERATION OF MOBY SERVICE

Ms. NEIL. Well, I have to tell you, when I talked about the tabulation and collation and the computerization of the survey returns, I was the one who did that, so I am very familiar with the needs assessment survey. I helped designed the system and the surveys. I am also not a fairly often rider, because it is usually full, and that is what it was for, and I guess that was the primary purpose that we put the system together for.

But the person calls in and asks for it—for instance, a person who is employed or going out to find a job or has an opportunity for a job calls in and sets up a regular schedule of appointments, pickup at a certain time in the morning, and to drop off again at his destination at a certain time in the evening. There are 10 vehicles that run through the city of Omaha, and those systems are routed for those regular service riders.

Senator LUGAR. What sort of vehicles are they?

Ms. NEIL. They are vans. They are 15-passenger vans. They have places for three wheelchairs and four ambulatory individuals. Those vans are routed and scheduled throughout the day. And then through the nonpeak hours—these are mostly during the peak hours. During the nonpeak hours of the day, then it is open for any kind of trip purpose that is necessary—groceries, socialization, and the whole gamut of personal things that people need to do to continue to be an active member of society.

The system is obviously not big enough. We are a city of some 311,000 individuals, and probably 10 to 15 percent of that population is in need of some special services. We do have five lift-equipped buses, but the system that has been designed, our MOBY system, has found that most of our riders on MOBY are within five to six blocks of the closest bus stop.

We have 180 buses in our system, so it is not a huge, large system, and it is fairly new. Our bus system is the takeover of an old defunct public transit system that was operated by a private corporation and was really destined not to provide service, just to provide a lot of buses on the street that didn't go anywhere. So we are building the system over the past 7 or 8 years.

The specialized service is really under demand. We don't have at this point in time a waiting list; however, the transit authority has asked for additional funds to put out new buses and additional new vans, and the requests from our citizens seem to be for more paratransit services as opposed to accessible buses.

And we have some unusual weather in Nebraska. When it is hot, it is really hot, and when it is cold, it is really ccld, and when it is windy, it is really windy, and people with any kind of a mobility or a stability problem, whether they are able-bodied or disabled, have an increased difficulty getting around. So when it is cold, it may be 30 or 40 degrees below zero, and that, I must say, is pretty cold to be sitting in a bus shelter waiting for a bus.

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Senator LUGAR. Thank you. Senator Williams, do you have questions for our witnesses?

Senator WILLIAMS. Thank you, Mr. Chairman. And thanks to the witnesses for statements that evoke a lot of thought and will make a real contribution, I know, to our deliberations here.

In your statement, Ms. Neil, you say we have suggested some standards for service. Now are those standards that you suggest—are they spelled out? I missed it, if they are, in your statement.

Ms. NEIL. No. I have simply suggested some basis for some standards, certainly not identifying any specific standards, but I think there are some things that need to be considered, and I know that there has been demand response and no trip purpose and the areas of services—those kinds of things have been suggested before, but I think there needs to be some specific kinds of things, and I only alluded to those which I think are very important.

And in the area of trip purpose, I think there needs to be some priority scheduling. I guess I have to believe that if people are going to become a viable part of the community and a participating part of the community and are able to work and able to get educational opportunities, I think those people should have an opportunity and a regular opportunity for that service. I think that is a key priority, and I don't know that that is spelled out in any of the things that I have read. And I think that is a standard that we need to have.

Senator WILLIAMS. Would it be hoping for too much to ask you to supply some more specifics in terms of standards?

Ms. NEIL. I would be happy to.

Senator WILLIAMS. Thank you. I think that would be very helpful.

One observation for Mr. Robrahn. It is said that part of the additional cost on buses where there are lifts is the loss of seating capacity, and I just wonder if that is a real cost factor or not. What kind of seating capacity is lost with a bus that is equipped with a lift for accessibility?

NO LOSS OF SEATING CAPACITY

Mr. ROBRAHN. It is not necessary that any be lost, because the transit authorities who are up on costs and familiar with technology put in jump type seats which can be lifted up for placement of a wheelchair. And when there's not a wheelchair there, they can be placed down so that other riders can use them. So there is no need for any loss of seat capacity.

Senator WILLIAMS. Well, you have given us some figures to examine, and we will, with a great deal of interest, to try to understand some of these analyses of additional costs because of accessibility. And some of them just seem to me—and my observation is superficial at this point—to be extreme, indeed. And your figures will be helpful to help us understand that.

Mr. ROBRAHN. Could I say that the CBO report, for instance, says that the average cost of a lift is $17,000. That isn't our experience. In Atlanta, for instance, they cost around $14,000. And of course the more lifts that are produced, the cost will go down. And it is estimated that it could go down as much as 50 percent. And I can't emphasize enough the ballooned figures of the trip costs for handi-

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capped people, which are primarily the result of the fact that when they take surveys, handicapped people aren't using a partially accessible system.

Right here in Washington, you frequently go to an appointed place to meet a bus that has a lift, and when the bus shows up, there is no lift on it, or the driver does not know how to operate it, or the lift is not in operation. So the secret is to have sufficient numbers of buses with lifts, that there is a good maintenance program to keep the buses themselves and the lifts in operation, and the training of the drivers to use the lifts.

Senator WILLIAMS. Thank you very much.

Senator LUGAR. Thank you, Senator Williams.

Let me ask on behalf of our colleague, Senator Garn, if either of you have comments on the suggestion that he has made for a local option plan, one that Senator Williams pointed out earlier in his questions to other witnesses, which had, I think, four stipulations.

Are either of you aware of Senator Garn's amendment, and do you have a comment on it?

Mr. ROBRAHN. I am aware of it. And of course it does provide some minimum standards for comparability, and of course we applaud that. But we don't feel that it goes far enough. And of course it does not deal with our objections to the lack of any kind of review procedure or any kind of procedure by which a certification can be denied or rejected by the Secretary. There is no remedy.

Senator LUGAR. Thank you.

Ms. NEIL. I am pleased with the amendment that I've read, and I would like to comment further on that a little later when I've had a chance to read it over. But I'm extremely pleased with the last two sections of it on retrofitting. I think that is a step in the right direction.

Senator WILLIAMS. Senator Cranston regretted that he could not be here, but he has some questions he would like to submit in writing.

Senator LUGAR. Thank you very much. Thank you, Senator Williams. And I thank the witnesses for coming today.

The hearing is recessed.

[Whereupon, at 4:30 p.m., the hearing was adjourned.]

[Additional material received for the record follows in the Appendix:]

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APPENDIX

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

RICHARD A. WARD, President
Director · Chief Engineer
Oklahoma Department of Transportation

FRANCIS B. FRANCOIS
Executive Director

STATEMENT FOR THE
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
AMENDMENTS TO THE URBAN MASS TRANSPORTATION ACT

by

FRANCIS B. FRANCOIS
Executive Director

May 18, 1981

Founded in 1914, AASHTO respresents the departments concerned with highways and transportation in the states, the District of Columbia and Puerto Rico, to foster the development, operation and maintenance of an integrated national transportation system. The active members of AASHTO are the duly constituted heads and other chief directing officials of the member highway and transportation agencies.

EXECUTIVE OFFICE: 444 N. Capitol Street, N.W., Suite 225 Washington, D.C. 20001 Telephone (202) 624-5800

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As requested by Committee staff, the American Association of State Highway and Transportation Officials (AASHTO) is offering this statement regarding proposed revisions to the Urban Mass Transportation Act AASHTO, as an association representing the State District of Columbia and Puerto Rico Departments of Highways and Transportation, is most interested and involved with the subject of these hearings of the Senate Subcommittee on Housing and Urban Affairs Our public transportation programs are in a crisis point and stand to be severely impacted by any dramatic change which is not thoroughly discussed and examined.

We are presently re-examining the federal public transportation programs to address the new Administration's questions on the Federal role and the proper sources of revenue for meeting the operating costs. Above all, we would urge the Congress to allow time for a thorough examination of alternative courses of action.

We strongly support the Reagan Administration's goals to make America more productive, control inflation and create an economic rebirth of our nation. We believe the health of our national economy is directly related to the health of our transportation systems. The best evidence of this is seen in the disruption of transit service to some of our cities this past year In New York City, an 11-day strike in Spring, 1980 resulted in an estimated loss of $150 million a day to the business community Service disruptions in Philadelphia and Boston also resulted in substaintial losses.

Not only is our economy affected by the health of our transit systems, but each of our transportation modes is affected by the condition of the other modes. The disruptions of transit service mentioned above had a devastating impact on the highway systems in those cities.

We are quite concerned about the effect the proposed phase out of operating assistance already has had on transit systems, particularly those rural systems which were participating in the Section 18 program. The uncertainty of the Federal role in this program has caused a dramatic drop in the rate of obligation of those funds.

Regarding the provisions of S.1160, we would like to offer the following comments at this time:

- Operating assistance for both urbanized and nonurbanized areas should be continued in fiscal year 1982 at the 1981 level.

- Each State should be given the flexibility to transfer funds within the State between areas to best meet the needs of the State.

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-We support the move to allow local option in determining the best method of providing transportation to the handicapped.

-We support continued State flexibility to determine the use of funding provided by the Section 18, rural public transportation program. If operating assistance must be phased out for this program, then the phase-out period should parallel the phase-out period required for the section 5 program.

-We support an early decision on whether to change to 1980 Census figures for distributing funding or retain 1970 population counts. The uncertainty makes budgeting extremely difficult for many areas at this time.

We would also like to comment on the present review of some 36 UMTA regulations. We wholeheartedly support such efforts to streamline federal requirements. We wish to emphasize four of these in particular:

Regulations on Section 504 of the Rehabilitation Act of 1973:

The approach offered in the Administration's transit bill to allow a local decision on how best to meet the transportation needs of the handicapped is much better than mandating a single approach to all areas.

Regulations on Section 13(c) of the Urban Mass Transportation Act:

The U.S. Department of Labor has extracted an awesome array of regulations from the simple statement that the application of Federal transit funds should not worsen the employment conditions of public transportation employees. These interpretations are beyond excessive They reflect disregard for the costs borne by State and local governments to comply with the regulations.

AASHTO recommends assigning an oversight group to improve the regulatory and administrative practices in this section, with appropriate representation by the States. For example, requirements for repreated reaffirmations of routine project agreements should be removed.

Third-Party Agreeements:

Preparing a third-party agreement which complies with all Federal rules requires a review of "FHWA FHPM 1-7-2 ", which refers to "OMB Circular A-102" or "A-110", depending on the nature of the contract. These then refer to "Federal Management Circular 74-21, Cost Principles." Furthermore, all of the above must conform to "UMTA Guidelines on Third-Party Agreements" and the "UMTA External Operating Manual".

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Every step during this process must also conform to the General Accounting Office's "Guidelines for Financial and Compliance Audits of Federally Assisted Programs".

AASHTO recommends taking positive action to adopt a more uniform procedure, which would make these directives compatible with each other.

Requirements for the Distribution of Services and Equipment to Minorities:

This regulation requires the gathering of information for distributing services and equipment purchased with UMTA funds. This requirement is even more of a burden to urbanized areas than to the States.

We recommend reducing the quantity and complexity of data requirements. A simple statement of certification would suffice in most cases, which would assure continued strong support for this program.

As noted at the outset, AASHTO is presently involved in an effort to review public transportation programs. Now is the time to recognize the broad range of services available to the public beyond the tranditional bus and rail forms of transit, such as vans, carpools, taxis, etc. We must also seek greater involvement of the private sector in public transportation services.

We must recognize that the federal government has a role not only in assisting in the support of capital acquisitions, but also in seeing that such investments are preserved.

Our public transportation systems have an important part to play in improving our economy and providing mobility for our citizens. We are hopeful that by working with the Committee we will see improvements in our public transportation services. We stand ready to be of any further assistance.

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STATEMENT OF
WILLIAM DONALD SCHAEFER, Mayor
OFFICE OF THE MAYOR • CITY OF BALTIMORE
250 City Hall, Baltimore, Maryland 21202, (301) 396-3100

Baltimore City is grateful for the opportunity to comment on the mass transportation legislation being considered by the Senate Banking Committee. We have several problems with the administration proposal which are discussed below. I am hoping you will take these issues into account while addressing the legislation.

Operating Subsidies

Baltimore City strongly opposes the administration proposal for a phase out of Tiers I through III under Section 5 of the Urban Mass Transportation Act. A total discontinuation of the subsidy program would cause an unwarranted hardship on transit users.

The Maryland Department of Transportation's Mass Transit Administration, which operates the Baltimore region bus system, presently receives over $15 million annually under Tiers I and II, and would be eligible for additional assistance under Tier III once the first section of the Phase I Baltimore Region Rapid Rail Transit System is opened in 1982. Bus fares now cover very close to 50% of operating costs. (It is basic Mass Transit Administration policy to maintain fares at a level sufficient to cover 50% of operating costs). The fare is $.50 per trip. However, with escalating costs, even if the federal subsidy continues, fares would climb as high as $.90 by 1985 in order to continue to collect approximately 50% of operating costs. While we recognize the inevitability of rising fares, we cannot accept the jump which would result by 1985 to $1.40 if federal subsidies no longer existed. The State of Maryland, which is currently financially strapped with respect to transportation funding cannot count on raising any additional revenues to compensate for the loss in federal aid.

Despite the continuing increase in gasoline cost, it is likely that a substantially increased fare would result in decreased ridership. This would necessitate even further increases in the fare level to cover 50% of operating costs. Each additional fare increase will further weaken the ability of the transit

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system to attract ridership. Service cutbacks would also likely be an option pursued, making mobility more difficult for those dependent on public transit. Contrary to an opinion recently expressed, a very large number of transit patrons are dependent on transit, and are not able to afford significant increases in transit costs. I would also like to note that each time a person can afford to switch to the automobile for personal transportation, the result is increased traffic congestion, and increased energy utilization. As the number of persons who commute to work by auto increases, parking resources become more and more taxed. Unfortunately, construction costs for parking facilities in central cities are exorbitant; providing adequate resources of parking is becoming increasingly difficult. I fear that the net result of these factors will be a tendency on the part of many companies to locate in suburban areas, where large amounts of ground level parking can be provided cheaply. This is a threat to the financial viability of urban areas.

Now is the time to increase, rather than decrease reliance on public transportation systems, if we, as a nation, are to pursue any long-term energy conservation strategy. The President's proposal is short-sighted in this respect.

Capital Assistance

The administration bill would not provide adequate levels of funding under Section 3 of the Urban Mass Transportation Act. For the Baltimore region, the possibility of reductions in spending has already jeopardized completion of the Phase I line of the Baltimore Region Rapid Rail Transit System. The Phase I line is a fourteen mile long transit line running from Charles Center in the downtown area to Owings Mills in suburban Baltimore County. Eight miles of the line, known as Section A, are nearing completion. The six mile extension, known as Section B, has cleared all environmental processes. Several contracts have already been advertised. Construction of the line concomittantly with that of

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a related expressway I-795, was committed to in the joint Environmental Impact Statement covering both facilities. Under the administration bill funding for Section B would not be made available.

Section B will be an extremely cost-effective six-mile surface rail project. Construction costs will only be approximately $31 million per mile, well below the average for new fixed rail construction. Furthermore, it has a high projected ridership (about 35,000 daily by 1990), and it is anticipated that 235,000 vehicle miles of travel per day would be eliminated by 1990 from congested streets by the extension.

In short, we believe that Section B should be funded. It is an extension of a rail line, not a new rail start. It is cost efficient. The Federal Government has participated in every decision which lead to the creation of the joint highway-transit project of which Section B is part. Countless decision of private developers and governmental parties have been made because, until recently, the Federal government stated the project would be implemented.

There is a possibility that Section B could be funded through the Interstate Transfer program. However, there is no absolute certainty that adequate funding will be available under the Interstate Transfer program. We believe that the most appropriate method of funding this project is through the Section 3 program.

The administration plan would eliminate the Urban Initiatives program except for those projects under construction. Baltimore has benefitted tremendously under the Urban Initiatives program, particularly with respect to downtown revitalization. The city has used the funding to leverage a tremendous amount of private investment in joint development projects. Elimination of the program would surely hamper our renovation efforts.

In large part, due to investment of $5 million in Urban Initiatives funds, and the previously expressed optimism regarding our chances of receiving at least $3.5 million additional funding for an existing project (Lexington Gardens Value

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Capture Project) and the design of a transit mall (Howard Street Transit Mall), Baltimore City recently received committments from a major developer to invest between $100 and $200 million in new construction, providing space for as many as 10,000 to 15,000 jobs in the downtown area.

Currently, we are awaiting final approval for funding for completion of the Lexington Gardens site (joint commercial/subway station development) and for funding for design of a transit mall which would facilitate more efficient transit in the congested downtown area, and which would result in a substantial amount of commercial revitalization in an area where it is much needed.

Undoubtedly, there are numerous other worthy joint transit and commercial development projects throughout the country, currently on the drawing boards, which could greatly enhance both downtown and neighborhood development by creating additional private investment.

Interstate Transfer

The administration is supporting a continuation of the Interstate Transfer program which we strongly favor. However, the levels proposed over the next few years are not nearly adequate to support the approximately $12 billion in potential transfers. Baltimore alone could have transfer requests of nearly $1 billion by 1983. We would recommend consideration of a significant increase in the authorization levels and/or extension of the 1986 deadline by which substitute projects must be started. Furthermore, there is no guarantee that even proposed authorized levels would be appropriated by the Congress. Therefore, we ask that you consider providing the Secretary of Transportation with contract authority to implement the program. This would ensure availability of funding, and would allow for reasonalbe advance planning.

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ENVIRONMENTAL POLICY CENTER
317 Pennsylvania Ave., S.E., Washington, D.C. 20003
202/547-5330
May 19, 1981

TESTIMONY OF HARRIET HOLTZMAN-PARCELLS FOR
THE ENVIRONMENTAL POLICY CENTER ON
S. 1160 BEFORE
THE SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

The Environmental Policy Center (EPC) appreciates the opportunity to comment on the Senate Banking, Housing and Urban Affairs Committee bill (S. 1160) on mass transit. EPC involvement in transportation stems from work we have been doing for many years in the area of energy conservation. Critical national energy concerns call for a transportation policy and program which will help alleviate the energy situation.

- Petroleum represents nearly 50 percent of all energy consumed in the United States.[1] Over half of this petroleum is consumed in the transportation sector.[2]
- Automobiles and light trucks together account for approximately two-thirds of the petroleum used in the transportation sector.
- In 1976, the Census showed that 89 percent of work trips were made by automobile. 73 percent of these were single occupant.[3]
- In 1980, 40 percent of U.S. average daily petroleum supply was imported;[4] nearly 40 percent of a barrel of oil goes to gasoline. In 1980, over $80 billion was paid out for imported oil.

Mass transportation provides a vital alternative to the private automobile for many trips and the only means of mobility for many individuals. It is critical to the nation's attempts to reduce its reliance on foreign oil and a strong federal commitment to mass transportation is imperative in the years ahead.

EPC testimony will comment on the specific proposals in S. 1160. Further, we would like to address the important link between mass transportation and: sound energy policy; reduced national vulnerability in the event of a shortfall; revitalization of urban centers and more concentrated, energy-efficient growth and; improved quality of life through reduced congestion, air pollution and noise pollution.

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SECTION 3: DISCRETIONARY GRANTS PROGRAM

Section 3, the capital grants program, supports the financing of: 1) construction of new fixed guideway systems and extensions to existing systems, including acquisition of real property, rolling stock, and alternative analyses relating to development of such systems; 2) acquisition, construction, reconstruction and improvement of facilities and equipment for public transportation, including buses and other rolling stock; rail and bus facilities and real property and improvements; and 3) new technologies in public transportation.

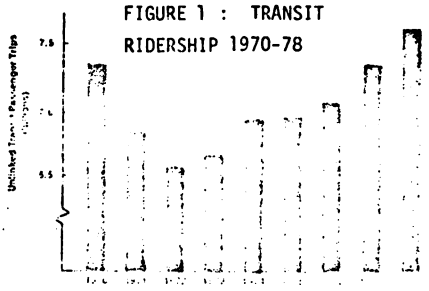
The authorizations proposed by S. 1160 are significantly lower than those proposed in the Senate mass transit bill of last year (S. 2296) which was never enacted into law due to unresolved differences between the Senate and House at the close of the session. The authorizations in S. 1160 are $7 billion less over the FY 1982-85 period than what had been proposed.

TABLE 1: CAPITAL AUTHORIZATIONS OF S. 1160 VS. S. 2296

	S. 1160 (present)	S. 2296 (last year)	$ Decrease
1982	$1.725	3.025	$1.300
1983	1.615	3.325	1.710
1984	1.750	3.625	1.875
1985	1.900	3.985	2.085
1986	2.000		6.970

The 1970's have witnessed a period of steady growth and expansion in the transit industry. In the wake of the Arab oil embargo and increased prices of gasoline, transit ridership has been steadily increasing since 1972 (see Figure 1). In order to meet growth in ridership and continue to provide reliable service, old equipment needs to be replaced and fleets expanded. A strong federal commitment is critical in the years ahead if this growth is to continue.

FIGURE 1 : TRANSIT RIDERSHIP 1970-78



Source: Reference 5

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Since 1973, with enactment of the Transportation Act of 1973, the federal share in capital projects has been 80%, with local/state match 20%. S. 1160 proposes a change in Section 4 (a) of the UMTA Act to state that the federal share is "not to exceed 80%". This marks a significant departure from past policy. A reduced federal commitment in capital purchases, combined with the proposed phase-out of federal operating assistance, will place a severe financial burden on transit systems. It will be very difficult for local transit operators to do any long range capital planning without firm knowledge of the federal commitment. Even if such a policy applies only to local decisions to try out new technologies, as is my understanding of the intent of this change, it will serve to discourage purchase and demonstration of new technologies which oftentimes lead to energy efficiencies and other desirable improvements in service. Finally, the Secretary's discretion on a project by project basis seems to be contrary to the Administration's policy of reducing federal intrusion in local decision-making. EPC would strongly urge against such a change in the Act and a continuation of the firm federal commitment of 80%.

S. 1160 further amends the UMTA Act capital assistance program, by adding to Section 3 2(A) a statement, that transit systems must demonstrate "sufficient capability to maintain the facilities and equipment" in order to qualify for Section 3 grants. No added funding however is proposed to cover maintenance; this is to come from local and state funding sources. At the same time, moreover, the bill proposes to phase-out Section 5, operating assistance, which has been used by transit systems to cover maintenance expenses, among other things. According to APTA's Transit Fact Book, 1978-79, maintenance represents approximately 23% of transit expenses nationwide. Clearly, among the older transit systems, which carry the vast majority of the nation's ridership, maintenance needs are significantly greater than on newer systems, and represent a tremendous cost burden.

In New York City, the subway is deteriorating as follows: the average number of miles between breakdowns is about 3,900 miles compared to 8,100 in 1976; the number of broken doors, dead motors and cost of damage by vandals have doubled since 1977; grafitti mars the interior of 80% of the cars and 17% are dimly lighted or dark. Lack of adequate capital funding has led to deferred maintenance.

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"The 229-mile system cost $2.5 billion to build and would cost more than $50 billion to replace. Any private corporation with a $50 billion asset would plan on spending about five percent of that per year on just preserving its investment. If the TA were to use that formula, it would need $2.5 billion a year in capital funds...the MTA (which channels NYC's Transit Authority funds and recognizes the limited available funds) has pegged the minimum, bare bones capital needs of the subway system at about $1 billion per year. The problem is the TA has been getting only about $300 million per year in capital from city, state and federal governments. That leaves a capital cavity of about $700 million per year for the TA which carries 35% of the nation's transit riders..." [6]

In Philadelphia and other older systems the story is similar. On SEPTA, the third largest transit system in the nation, the average age of the bus fleet is 12 years with 25% of the vehicles over 12 years. The average age of the streetcar fleet is 35 years, with the "newest" one built in 1948. Declines in mileage between breakdowns in 1979 compared with 1968 is significant. Because of chronic financial problems, transit cars on the major line below City Hall, the most heavily traveled line in the region, have never been completely overhauled, a procedure Budd officials say should be done at least every 8 years. [7]

The maintenance needs on old and newer systems alike are major. By practicing preventive maintenance the age of a bus or rail car can be extended several years as compared with deferred maintenance. However, without adequate funding this is not likely to occur. The federal government has a strong interest in protecting its capital investment. In the event that operating assistance is phased-out as proposed by 1985 (or earlier), EPC would strongly urge the Committee to amend its Section 3 proposal and allow some of the funds to be used for maintenance. We would recommend a block grant approach with the funds distributed on the basis of service criteria (ie., revenue vehicle miles).

Finally, it has been stated by the Administration that there will be a deferral on all new rail starts until the economy has recovered sufficiently. It is unlikely that there will be reconsideration of such starts before 1984 at the earliest. Only those rail starts for which a letter of intent has been issued and construction commenced will be allowed to complete a "usuable operable segment".

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Section 3 (3) of the UMTA Act requires that the Secretary not approve a grant or loan for a project unless that project is part of an approved program of projects required by Section 8. Section 8 calls for planning and technical studies to be conducted by local officials acting through a metropolitan planning organization in cooperation with the state. Section 8 opens stating:

> "It is declared to be in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective, the Secretary shall cooperate with the state and local officials in the development of transportation plans and programs which are formulated on the basis of transportation needs with due consideration to comprehensive long-range land use plans, development objectives, and overall social, economic, environmental, system performance and energy conservation goals and objectives and with due consideration to their probable effect on the future development of urban areas of more than 50,000 population. The process shall include an analysis of alternative transportation system management and investment strategies to make more efficient use of existing transportation facilities. The process shall consider all modes of transportation and be continuing, cooperative and comprehensive..."[8]

The purpose of the alternative analysis is to find the best and most energy efficient mode of transportation for a particular community. By categorically eliminating a particular mode, one may be eliminating at the outset the best choice for that location. While there has not been an elimination of new rail starts, as with the urban initiatives and downtown people mover programs, the deferral will certainly deter (more likely eliminate) consideration of this alternative by local communities for fear that if chosen, it may never receive federal funding. In addition, it is not clear whether there will be federal funds for the planning of such systems during the deferral period. With the costs of construction rising continually, planning should at least continue in the next few years, so that when the economy recovers, those communities for which this is the best alternative will be ready to move ahead. By deferring planning as well as construction during the next few years we may be greatly increasing the cost of their construction or eliminating that alternative entirely.

SECTION 5: OPERATING ASSISTANCE

The Section 5 program provides federal assistance to transit systems to help offset their operating deficits. Recently there has been much attention to the fact that such subsidies have grown in recent years

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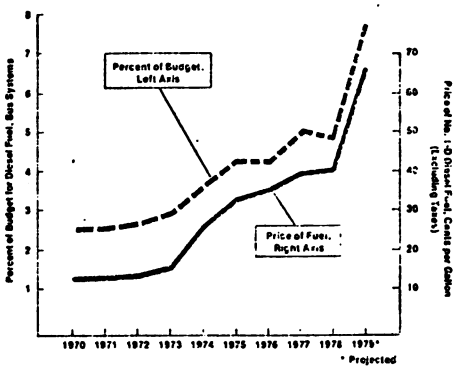
and contributed to escalating labor costs. Little has been said, however, about the rapidly growing cost of motor fuel which has dramatically impacted bus transit systems in recent years.

> "Most transit systems use No. 1-D diesel fuel, a highly refined middle distillate that minimizes air polluting emissions from buses. The cost of No. 1 diesel fuel has risen 450% in the last nine years, from 12¢ per gallon, excluding taxes in 1970, to 65¢ per gallon, excluding taxes, in the summer of 1979. This incredible price increase of diesel fuel is five times as great as the Consumer Price Index, which rose only 88% during the same time period." [9]

As was the case several years ago in the aviation industry, the transit industry is finding fuel costs a much larger portion of their expenditures: in 1970, fuel costs accounted for 2.5% of transit system budgets for bus operations; by 1979, diesel fuel accounted for 7.7% of the cost of bus operations.

MOTOR BUS DIESEL FUEL COSTS



S. 1160 calls for the phase-out of federal operating assistance by 1985, premised on the belief that such assistance is a local responsibility and that the federal responsibility lies in capital purchases alone. This marks a major departure in philosophy from past Congresses and administrations. EPC recommends that consideration be given to a restructuring of the operating assistance program, rather than total elimination of such a vital source of funds for transit systems. The stated federal interest in the growth and success of public transportation systems in this country implies a federal interest in assuring that these systems have adequate means of operating.

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States and localities already shoulder most of the public operating assistance. In the 26 largest metropolitan areas, the average federal share of operating expenses is only 17%; for many of the largest transit systems the federal is less than 10%: in New York it is 9.6%, in San Francisco 9.8% and in Boston 9.4%.[10] Yet, the federal share is a critical one. The precarious financial state of many of these systems was vividly dramatized last December when the Boston system shut down due to lack of funds and recommenced operation only due to an emergency bail-out by the state.

Loss of funds would largely have to be made up through increased fares. Of the 26 largest metropolitan areas, 42% already obtain over 40% of their revenues from the farebox; 70% obtain over 30% of their revenues from the farebox. Fares increased in 1980 on major transit systems across the country, increases on the order of 25-50¢.[11] These increases included:

1.	Pittsburgh (3/80)	increase from 50 to 60¢; then to 75¢
2.	S.F. Muni (4/80)	fares doubled, from 25¢ to 50¢
3.	New York City (6/80)	fares increased from 50¢ to 60¢
4.	Mass. Bay Transit	fares doubled from 25¢ to 50¢ on transit
5.	S. Calif. RTD (7/80)	fares increased from 55¢ to 65¢
6.	Philadelphia (7/80)	fares increased from 50¢ to 65¢
7.	Chicago (10/80)	fares increased from 50¢ to 60¢; will increase to $1.00 in August

On May 14, 1981, the New York Times published an article, "Ravitch Warns of $1 Fare Without Rise in Transit Aid". Ravitch, chairman of the New York City Transit Authority stated that the Transit Authority "faced a deficit of $383 million-more than double his previous assessment-and $1 dollar fare in the next fiscal year unless the State Legislature acted immediately to increase the state operating subsidy." The letter outlined the "grim" fiscal consequences of inflation, unexpected revenue shortfalls, new maintenance and power expenses and the apparent phase-out of federal operating assistance.

A survey by the U.S. Conference of Mayors of 100 cities on the impact of eliminating transit operating assistance found:[12]

- 46% will face substantial fare increases
- 20% will face moderate fare increases
- 65% will suffer significant ridership decreases
- 57% will reduce services

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With states and localities already burdened with demands on limited funds and reluctant to increase taxes, the loss of federal funds will result in increased fares. The degreee of increase will determine the impact on ridership. Studies have shown that the price elasticity of demand for transit (percent change in patronage due to a percentage change in price) varies from -.1 to -.7 with a clustering in the range of -.3 to -.5 (a fare increase of 10% will reduce transit patronage in the range of 3-5%).[13] These are average peak hour demand elasticities where demand is less elastic than off-peak. Therefore, ridership loss would tend to be impacted more in the off-peak than peak hour. If the results of the Mayor's survey are an indication, ridership losses could be significant, at a time when transit systems have been attracting growing numbers of riders.

Of equal importance is the finding that a majority of transit systems will have to reduce service. Ridership is very responsive to service factors (comfort, convenience, speed); improved service in recent years has helped boost ridership. Data from Boston, based on a model by the Charles River Associates found a price elasticity for service factors as follows: -.39 for transit line haul time and -.709 for transit access time (a 10% increase in transit time will result in a 4% decrease in patronage; a 10% increase in access time will result in 7% loss of patronage). Therefore, if transit systems are foced to reduce service or cut back on other improvements, this will have negative impacts on ridership.

If fares are to be increased, EPC would recommend that thought be given to varying fares by time of day and distance, rather than across-the-board fare increases. As stated above, peak hour demand, dominated by the home-to-work trip, is less elastic than non-rush hour demand and higher fares will have less impact on travel than across-the-board increases. Further, the marginal cost to transit of carrying additional passengers travelling during off-peak hours is lower than for peak hour travel, since there is usually excess capacity during off-peak hours and additional riders can be accommodated at little cost. Finally, higher peak hour fares may cause some riders to shift from peak to off-peak hours. There is an obvious relation between distance travelled and the cost of providing service which justifies fare differentiation by distance. The practice of charging a flat fare over a large urban area, common to most systems, keeps fares relatively high for short trips and tends to subsidize longer trips from the suburbs.

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Federal policy and that of transit systems in the past has been to boost ridership and fares have therefore, been kept reasonable. In this policy the nation has been successful. The fear of raising fares in general, and in the peak hour in particular, is that some riders will revert back to autos at a time when the roads are most congested.

Auto pricing policies (congestion pricing, increased parking fees in the downtown, increased gasoline prices, etc.) are likely to be more effective deterrents to auto use and should accompany federal and local efforts to increase transit ridership.[14]

No discussion on the elimination of federal operating subsidies should occur without mention of the economic rationale for subsidies.

I. TO ENCOURAGE SOCIALLY DESIRED TRAVEL WHICH WOULD NOT OTHERWISE OCCUR: As discussed in detail above, there is a direct relationship between ridership and fares. By allowing fares to remain at a lower level than would otherwise be the case, ridership is encouraged that would not otherwise occur. If transit riders reverted back to their cars, congestion problems in most large cities would be formidable as is demonstrated each time there is a large city transit strike.

II. TRANSIT IS MORE EFFICIENT AND ECONOMICAL FOR MANY TRIPS THAN THE AUTO: The greatest potential economy in land use lies in the fact that transit can move large numbers of people in a fraction of the space required for the auto.

The space required for auto movement and parking ranges from about one-third of the urban land area in a transit-oriented city (New York) to about double that amount, two-thirds in an auto-oriented city (Los Angeles). Much of this space is on the most valuable land in the city (ie., the numerous parking garages in downtown areas).[15]

> "The relatively modest land requirements of rail transit were a consideration in post World War II deicisons to build rail systems. It is not feasible in the two dozen largest cities to accommodate the predicted increases in peak-hour travel by means of increased auto travel." 16

Depending on loading and headway assumptions, the number of highway lanes required for automobiles carrying an average of 1.4 persons may run from 2 to 7 times the number of lanes required for buses, and 4 to 19 times the number required by an 8 car train.

Transit can also provide much more efficient travel in the peak hour through rail and expressway buses (operating in reserved lanes or on special busways). Autos are caught in the stop and go traffic congestion.

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III. TRANSIT BENEFITS NON-TRANSIT USERS: Transit confers "external benefits", benefits to those other than direct users. Auto drivers benefit from reduced congestion on streets and highways. The entire community benefits from reduced congestion, noise and air pollution, etc. Merchants, employers, real estate developers, etc., benefit from the access provided for employees and customers.

IV. INTEGRAL PART OF URBAN REVITALIZATION AND INFLUENCE ON ENERGY EFFICIENT LAND USE PATTERNS: New demographic forces and new economics of housing are helping to revitalize many older metrolpolitan areas; transit plays an important role in this process. There are a growing number of small households for whom urban living is preferable to suburban living (young single working persons, married couples without children, growing numbers of elderly). Slowed growth and increasingly costly housing in the suburbs is also causing many people to take a new look at rehabilitating housing in the city.[17] Many of these people rely on public transportation as their only means of mobility. Good public transit is a key component in the urban revitalization process, a process that is helping to counter post-World War II (auto era) sprawl, and result in more energy efficient land use patterns and lifestyles.

V. TRANSPORTATION FOR THE TRANSIT DEPENDENT: Transit provides the only means of mobility for many individuals. In particular, subsidized transit fares benefit lower income persons who rely on bus and streetcar transit more than higher income groups (see Tables 2 and 3). Furthermore, the gross benefits of transit operating subsidies are larger in absolute terms for those with household incomes between $3,000 and $10,000 than for any other income group. As a proportion of household income, such benefits increase steadily as income falls.

TABLE 2
ESTIMATES OF RELATIVE DEPENDENCE ON TRANSIT
BY VARIOUS INCOME GROUPS IN 1970

	Percentage of trips by			
Income Class	Bus/ Streetcar	Subway/ Elevated	Commuter Rail	Taxi
Below $ 3,000	14.0	1.7	0.	1.6
$ 3,000-$ 4,999	11.3	1.4	0.	.3
$ 5,000-$ 7,499	5.5	1.4	.2	.2
$ 7,500-$ 9,999	2.5	1.0	.2	.5
$10,000-$14,999	2.4	.9	.2	.2
$15,000 and over	3.1	1.0	.3	.5
All incomes	4.4	1.2	.2	.3

Source: Ref. 18

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TABLE 3
TRANSIT DEFICITS ALLOCATED BY INCOME CLASSES

Income Class	Percentage of Households in Class	Percentage of Transit Deficit	Average Subsidy per Household: Amount	Average Subsidy per Household: Percent of Income
Below - $ 3,000	17.3	11.0	$28.38	1.89
$ 3,000 - $ 4,999	11.1	12.5	50.26	1.26
$ 5,000 - $ 9,999	30.9	38.9	54.17	.72
$10,000 - $14,999	23.0	21.2	36.95	.30
$15,000 and over	17.6	16.4	35.01	.14

Source: Ref. 19

Clearly, there is a strong basis for a federal role in subsidizing public transit. Rather than eliminate the Section 5 program, EPC strongly recommends the Committee examine a restructuring of the program.

As a final comment on the Section 5 program, S. 1160 proposes to amend the public hearing requirement when a transit system proposes to raise fares or change routes. Presently, before raising fares or changing routes, a transit system must hold a public hearing, consider the comments received and finally, consider the impact on energy conservation, economic environmental and social impacts. S. 1160 would amend this to state that the Secretary must have assurance that transit systems receiving operating assistance have a locally developed process to consider public comment. Such "locally process" however, may vary considerably from city to city. As transit provides the only transportation for many individuals, the public hearing guarantees citizens the right to express their concerns on route and fare changes. The proposed phase-out of Section 5 operating assistance is likely to result in service reductions and fare increases. EPC recommends therefore, that the Secretary must receive certification from operating assistance recipients that the "locally developed process" entail a full public hearing and that such comments be considered fully.

While these comments complete the Environmental Policy Center's specific concerns with S. 1160, we have strong concerns about the critical energy situation presently facing the nation and would like to comment, in the attached Appendix, on the importance of mass transportation to reducing our reliance on imported oil, providing a critical energy efficient alternative to the private automobile for many trips and reducing our nation's vulnerability in the event of an oil shortfall.

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FOOTNOTES

1. U.S. Department of Energy, Monthly Energy Review, November 1980.

2. Ibid.

3. Bureau of the Census, Annual Housing Survey, 1976.

4. Department of Energy, Ibid.

5. American Public Transit Association, Transit Fact Book 1978-79, December 1979.

6. American Public Transit Association, Mass Transit, "Big Apple's Bus Service Subways are on the Slide", February 1981, Vol. VIII.

7. American Public Transit Association, Mass Transit, "SEPTA's Getting Older Not Better", October 1980, Vol. VII.

8. 49 U.S.C. 1601 et. seq. (Urban Mass Transportation Act of 1964 as amended).

9. American Public Transit Association, Transit Fact Book 1978-79, December 1979.

10. American Public Transit Association, Selected Transit System Characteristics Estimated for Entire Urbanized Areas for Calendar Year 1979.

11. American Public Transit Association, Mass Transit, "Fares Head in One Direction: Up", March 1981.

12. U.S. Conference of Mayors, Testimony before the Senate Banking, Housing and Urban Affairs Committee, May 15, 1981.

13. U.S. Department of Transportation (prepared by Institute of Public Administration), Financing Transit: Alternatives for Local Government, July 1979.

14. Ibid.

15. Ibid.

16. Ibid.

17. Ibid.

18. Pucher, John, Income Characteristics of Transit Riders, MIT Center for Transportation Studies, May 1977.

19. Ibid.

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ENVIRONMENTAL POLICY CENTER
317 Pennsylvania Ave., S.E., Washington, D.C. 20003
202/547-5330
May 19, 1981

MASS TRANSPORTATION AND ENERGY: LINK TO REDUCED RELIANCE ON IMPORTED OIL AND REDUCED VULNERABILITY IN THE EVENT OF AN OIL SHORTFALL

(Appendix to EPC Testimony before the Senate Banking, Housing and Urban Affairs Committee)

A strong public commitment to mass transportation is imperative in the years ahead as the United States attempts to reduce its reliance on petroleum, particularly its reliance on imported oil, and its resulting vulnerability in the event of an oil shortfall.

- Petroleum represents nearly 50 percent of all energy consumed in the United States. Over half of the petroleum is consumed in the transportation sector.[1]
- In 1980, 40 percent of U.S. average daily oil supply was imported.[2] Nearly 40 percent of a barrel of oil goes to motor fuel. Over $80 billion was spent in 1980 for imported oil.
- Automobiles and light trucks together account for approximately two thirds of the petroleum used in the transportation sector.

In Western Europe the private car is used by less than half of the working population in commuting to and from work. The average home-to-work. and return trips using private autos in the 9 members of the European Community totaled 44.2%. Streetcars, buses and metro were used by 19.2%; 17.5% walked to work and 13.5% used bicycles, mopeds, or motorcycles.[3] This contrasts dramatically with travel to and from work in the United States where 88.9% drive to work (of which 72.9% drive alone), 5.6% use mass transportation, 4% walk and less than 1% use bicycle or motorcycle.

TABLE 1
PRINCIPAL MEANS OF TRANSPORTATION TO WORK BY PLACE OF RESIDENCE
1976 Census

	Total	Inside SMSAs			Outside SMSAs
		Total	In central cities	Not in central cities	
Total car	88.9	87.3	79.6	92.9	92.7
Drives self	72.9	73.0	66.9	77.3	72.8
Carpools	16.0	14.3	12.7	15.6	19.9
Mass transportation[b]	5.6	7.8	13.4	3.7	0.5
Bicycle or motorcycle	0.8	0.8	1.0	0.7	0.7
Taxicab	0.2	0.2	0.4		0.2
Walks only	4.0	3.5	5.1	2.3	5.1
Other means	0.6	0.5	0.6	0.4	0.8

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It is not surprising therefore, that U.S. per capita consumption of gasoline in 1979 was approximately 4 times that of Western European nations.[4]

FIGURE 1
PRODUCTS DERIVED FROM A BARREL OF OIL

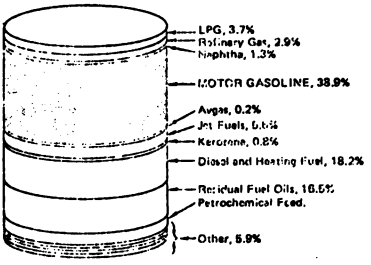

TABLE 2
INTERNATIONAL GASOLINE CONSUMPTION: 1979

	Million Barrels/ Day	Barrels Gas/ Capita
Western Europe	2.4	
France	.4	2.8
W. Germany	.5	3.3
United Kingdom	.4	2.8
United States	7.0	11.7

Mass transportation, by providing a viable alternative to the private auto for many trips and by influencing more concentrated and energy-efficient land use patterns, plays a critical role in the nation's attempts to solve its energy problems. Transit consumes low quantities of petroleum (Figure 2). As U.S. and world supplies become scarcer and prices continue to climb, the significance of even modest shifts to transit in a national effort to conserve fuel are noteworthy.

A 1977 study by the Congressional Budget Office, Urban Transportation and Energy: The Potential Savings of Different Modes,[5] questioned whether mass transit really is all that energy efficient, and is frequently mentioned in discussions of energy efficiency of mass transit. The report has been criticised by many individuals, including the Department of Transportation, who have challenged the validity of the assumptions and values employed in the study.

The CBO report states at the outset that past analyses have been limited by focusing only on propulsion energy, energy in vehicle manufacture, construction, etc. Of equal importance in determining energy savings, CBO notes, is the manner in which people adapt to new transportation systems. New or changed service can stimulate more trips, prompt mode switches from

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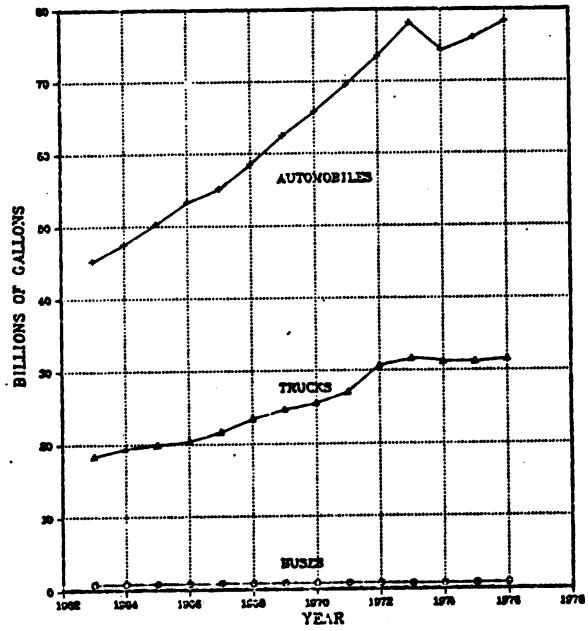
FIGURE 2
TOTAL ANNUAL FUEL CONSUMPTION BY TYPE OF VEHICLE: 1963-1976 [6]



more efficient to less efficient modes and finally, that when energy spent in access to public transportation is considered, energy savings may be of little or no value at all. Perhaps most importantly, the CBO report states:

> "Of necessity, it is assumed in the analysis presented here that homes, jobs, and businesses do not move because of the changes in transportation programs that are being analyzed."

and

> " Although transportation and land-use policy are necessarily tied together in the long run, this paper focuses on the energy impacts of transportation policy alone; that is, it is assumed that shifts metropolitan development will not occur because of the variations in transportation policy considered here."

It is on these assumptions and the resulting conclusions that the report has been most heavily criticised, as will be discussed below. The report concludes that vanpooling performs best on all measures (although the report also notes that vanpools apply only to a small segment of total travel) and dia-a-ride is the worst. Bus and carpool show up consistently

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well, only slightly behind vanpool in expected energy savings. Heavy rail while efficient in terms of operating energy, drops considerably in ranking when acess is considered. Under typical conditions, new rail systems are found to actually waste energy rather than save it, a principal reason being that autos are used by 50-90 percent of the patrons for access to stations. The report concludes that buses appear to offer the greatest fuel savings and that its access requirements and route coverage are such that all things considered bus requires only half the energy of new rail or trolley.

Perhaps one of the largest flaws in the study is that it fails to include any land use changes as a result of transportation decisions. Yet, it is precisely for this reason that many areas are looking to rail. As New Jersey's Governor Byrne stated in July 1979, in the wake of oil shortages,

> "It is not the petroleum saved directly by transit vehicles that is most important, rather, it is the total petroleum efficiencies of the urban and more centralized suburban society designed and built around public transportation that holds the promise to our future Public transportation serves to foster a lifestyle by which a person's work, residence, shopping and recreation are all more efficiently intertwined." 7

Even the CBO authors appear to have some sentiments in this direction, as the report states in the conclusion:

> "Long term energy savings are particularly uncertain because over a period of many years, there will be shifts in the location of jobs, stores and houses. These shifts will occur because urban growth is influenced by zoning policies, land costs... The quality of available transportation is one of the forces shaping urban development...any shift in transport policy that facilitates long distance travel may direct frowth so as to create more such travel and any policy that makes it easier to move in congested central parts of cities may lead to more concentrated growth and correspondingly shorter trips." 8

Transportation systems are a key part of urban development strategies to counter energy inefficient sprawl. Two Canadian cities that have built heavy rail transit systems in the post war period have had considerable success in utilizing their transit systems to shape development (Montreal and Toronto). The coordination of zoning policies, availability of developable land and transportation were all brought together successfully. In Washington D.C. METRO has been found to have resulted in millions of dollars of development around transit stations.

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"The development of the METRO system has begun to have a major impact upon private investment decisions in the National Capital area. Even though only 30% of the system has been built, more than $970 million worth of private development has already been completed or placed under construction in the vicinity of existing or proposed METRO stations, and nearly $5 billion more is contemplated...In assessing the impact of METRO upon private developments that have occurred in recent years, or are in process, it was found that although in many cases the basic decision to invest did not necessarily depend upon the METRO system, the construction of METRO clearly affected the location, intensity and timing of the development." [9]

TABLE 3

PRIVATE INVESTMENT RELATED TO METRO [10]

Total Washington Area

		Already Completed, or underway since 1969	Some Investment Committed But Development Pending	Potential Development Projected by Public or Private Planners
Amount Invested	DC	$359,850,000	$879,400,000	$ 370,500,000
	VA	409,675,000	682,300,000	1,651,300,000
	MD	202,500,000	468,100,000	841,900,000
		$972,025,000	$2,029,800,000	$2,873,700,000
Permanent Private Jobs	DC	23,458	43,300	14,840
	VA	22,581	38,653	43,050
	MD	13,081	25,120	31,598
		60,158	106,073	89,288
Dwelling Units	DC	92	2,500	2,550
	VA	2,244	2,435	19,500
	MD	565	3,976	6,700
		2,901	9,211	28,750

Similar findings have been made in the residential sector. Home values in areas adjacent to and in close proximity to METRO stations are increasing in value at a faster rate than those in the same neighborhood but further away from the stations.

> "While proximity to METRO seems always to increase the value of a house, its effect appears to be greater in two specific areas: 1) neighborhoods that were showing potential for improvement before METRO and 2) neighborhoods that aren't too far from the center of Washington." [11]

In addition to exclusion of energy benefits from more energy efficient land use, to which rail and mass transportation contribute, the CBO report found that there were neglible energy savings from new rail systems because they borrow heavily from more efficent modes, 50-90 percent of the patrons access stations by auto and they generate a significant number of new trips.

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The assumptions about the number of trips by auto to access stations and the greater circuity of these trips (than direct auto commuting) have been greatly criticised. In the Department of Transportation critique, it is noted:

> "The authors of the report, in a recent discussion, indicated that the circuity factor was one of the more uncertain assumptions used in the study. Data for one rapid rail situation that was available supported the value used, but as a generalization it may well not be valid." [12]

The circuity factor used for bus service, on the otherhand, was lower than that for rail. This seems to imply the use of local streets and arterials for bus movement. Yet, the bus sysem portrayed in the report is an express bus service which "might be expected to possess different values of circuity, station energy consumption, access mode characteristics and diversion" than those assumed. An express busway or freeway bus lanes, with limited access points, could be expected to have a higher circuity factor than that assumed.

The CBO report assumes that 50 to 90 percent of the new rail passengers would access stations by auto. Yet, a 1979 Metrorail ridership survey in Washington D.C. in 1979 found that on a typical day, about 13,400 Metrorail commuters reached the train by park-and-ride; ridership of rail only was approximately 150,000 during this same period, suggesting that less than 10% used park-and-ride.[13] MARTA in Atlanta was designed to assume that about 28% would park and ride; data from November 1979 for the East Line only, show park-and-ride access at 35%, bus access at 48% and walk access 16%.[14] These figures are significantly lower than those assumed in the report.

The authors of the study differentiated between rail and bus diversion capabilities and concluded that rail could divert only 35% from auto while bus could divert 55%.

> "However, the limited number of samples and local pecularities do not make a convincing case for such a differentiation to be applied as a generality... the paucity of data make it difficult to justify generalizing mode specific diversion values based upon intrinsic modal characteristics." Ref. 12

A recent METRORAIL study by the Washington Council of Governments found that while systemwide the number of previous auto drivers now taking METRO is 28%, on certain lines, it is significantly higher: on the New Carrollton extension, previous auto ridership is 44%.[15] Finally, while many of the auto diversion capabilities of bus in the CBO report seem premised on "express bus service", other assumptions such as circuity and access mode seem to imply arterial street service which would alter energy assumptions.

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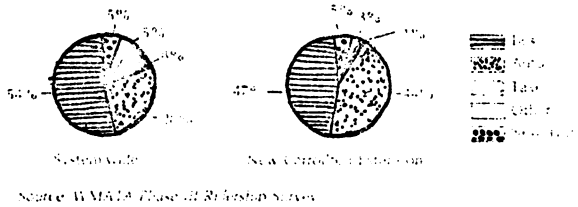
FIGURE 3
Prior Mode of Travel of Metrorail Riders
(May 19[illegible])



Source: Reference 15

These large auto diversions are significant as autos are generally the least energy efficient mode of urban transportation, requiring about twice as much energy per passenger mile as do new rapid rail systems. Below is a comparison of energy used per passenger, with the average automobile rated as 100% and other modes shown in relation to it.

TABLE 4
ENERGY USED PER PASSENGER

	(Percentage of Average Automobile)
Dial-a-ride	170%
Average automobile	100
Heavy rail transit (new)	65
Car Pool	54
Commuter rail	50
Light Rail	50
Heavy rail transit (old)	39
Bus	30
Van Pool	24

Source: Reference 16

While auto new auto fuel economy continues to improve, and has the "technological potential" to achieve signficantly higher levels (50-60 mpg), claims that these improvements in the automobile are significantly eroding the energy benefits of mass transportation, must be examined with critical factors in mind. First, urban rush hour driving is stop and go driving when the auto is not performing at its most efficient level and over 50% of these trips are less than 10 miles in length, when again, autos are operating at less than 80% efficiency.

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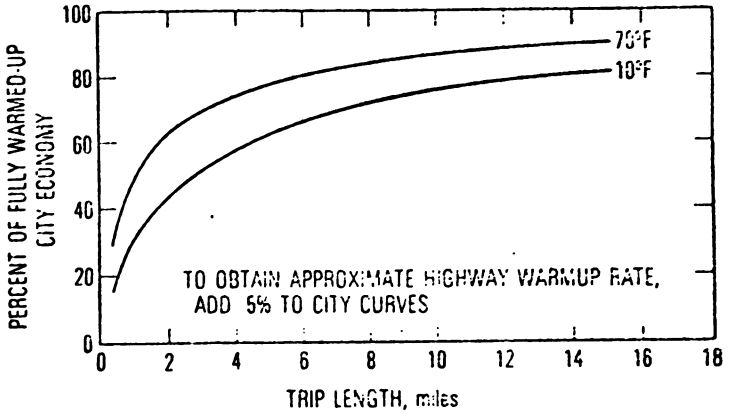
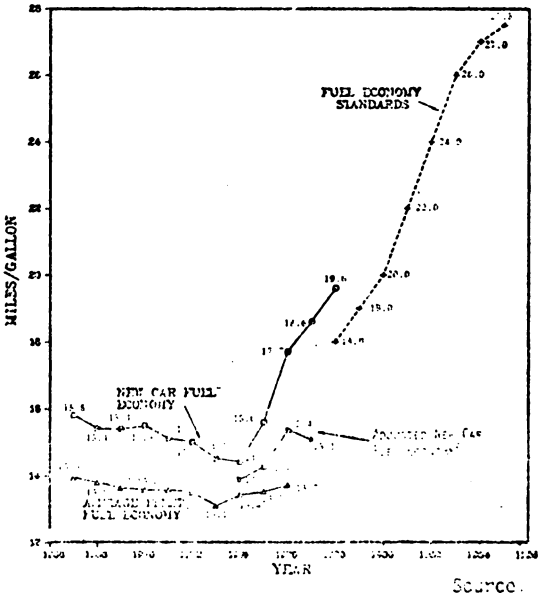
FIGURE 5
VARIATION OF AUTO FUEL ECONOMY WITH TRIP LENGTH



Source. Reference 17

Secondly, even though new car fuel economy is 20 miles per gallon (EPA Test) in 1980, the miles per gallon obtained on-the-road is lower (shortfall). Further, new cars represent only 10% of the total fleet so that in 1976, for example, while new car fuel economy was 17.7 mpg, the nation's fleet average was only 13.7 mpg.

FIGURE 6
FUEL ECONOMY AND STANDARDS: 1967-1985



Source. Reference 13

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Thirdly, mass transportation maintains a permanent edge on automobiles in terms of the role it plays in influencing energy efficient land use patterns as described in EPC testimony on S. 1160.

In conclusion, it is readily apparent that by changing assumptions built into the CBO analysis, the conclusions reached about relative energy savings of different modes, may also change, calling for reconsideration of the report's concluding comment that expenditure of federal funds on these systems for purposes of energy conservation appears to be misguided and possibly even counterproductive.

> "Since localities without rail systems have densities low enough to be served by buses; since bus systems cost a tenth of rail and since we have observed that rail do not in themselves have the power to change land use patterns-does the test of cost-effectiveness suggest that federal aid to rail transport be abandoned? Only if narrowly applied, for there is more to urban life than transportation cost-effectiveness. As past Secretary of Transportation Coleman stated, the federal government should help localities develop systems which meet local needs...localities which decide they no longer want to pay the costs of sprawl may well need a rail system to help create alternative patterns of growth and development-the operative word being "help"." [19]

As a final comment on the link between mass transportation and energy, mass transportation plays a critical role in assuring that large cities throughout the nation will continue functioning in the event of an oil shortfall. Millions of workers in cities throughout the country depend on mass transit as their means of getting to and from work. In New York City, over 3.5 million persons ride the subway each day; in Chicago, 85% of the people who travel each day to the downtown, use mass transit.

In the wake of the Arab oil embargo, ridership on public transportation throughout the nation rose. Again, in 1979, skyrocketing gas prices and long service station lines in the spring and summer, led to increases in ridership. As Representative Bob Edgar told the House Public Works Subcommittee on Surface Transportation in July:

> "It is my hope that Congress now recognizes that a gallon of gas saved in Philadelphia is a gallon that can be used in Pocatello. Every trolley ride in San Francisco will help keep tractors rolling in San Joaquin." 20

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TABLE 5
PERCENTAGE OF CENTRAL CITY WORKERS USING TRANSIT FOR THE JOURNEY TO WORK IN LARGE U.S. CITIES

City	% of Workers Using Transit
New York	56
Boston	36
Newark	32
San Francisco	32
Philadelphia	32
Chicago	30
Pittsburgh	29
New Orleans	26
Washington	25
Baltimore	21
Cleveland	20
Buffalo	18
Milwaukee	17
Detroit	15
St. Louis	13
Minneapolis-St. Paul	13
Cincinnati	12
Miami	12
Seattle	11

Source: Reference 21

FOOTNOTES:

1. U.S. Dept. of Energy, Monthly Energy Review, November 1980.
2. Ibid.
3. Council for International Urban Liaison, Urban Transportation Abroad, "European Majority Rides, Walks and Bikes to Work", Spring 1981, Vol. 4 #1.
4. Yergin, Daniel, Dependency Dilemma, Harvard University, Center for International Affairs, 1980.
5. Congressional Budget Office, Urban Transportation and Energy: Potential Savings of Different Modes, December 1977.
6. U.S. Department of Transportation, Federal Highway Administration, Highway Statistics, Table VM-1, annual.
7. American Public Transit Assn., Mass Transit, "A New Love Affair With Transit" October 1979, Vol. VI.
8. Congressional Budget Office, Ibid.
9. Federal City Council, METRO-Related Private Investment, July 1979.
10. Ibid.
11. Weiss, Michael, "How Close is Metro?", Washingtonian, December 1980.
12. Department of Transportation, Memorandum "Review of CBO Report: Urban Transportation and Energy: Potential Savings of Different Modes", November 1977
13. Metropolitan Washington Council of Governments. The Region: Transportation Special Report, Spring 1981, Vol. [illegible] - 2.
14. Phone discussion with MWCOG staff on May 20, 1981.
15. Metropolitan Washington Council of Governments, Ibid.
16. Department of Transportation (prepared by Institute of Public Administration) Financing Transit: Alternatives for Local Government, July 1979.
17. T. Iura, Roessler and White, "Research Plan for Achieving Reduced Automotive Energy Consumption, National Science Foundation, 1975, Report # ATR-76(3467)-1.
18. J.D. Murrel, "Light Duty Automotive Fuel Economy...Trends Through 1978", SAE Paper 780036, 1978.
19. U.S. DOT, Financing Transit: Alternatives for Local Govt., Ibid.
20. American Public Transit Assn., Mass Transit, "A New Love Affair with Transit. Ibid
21. Bureau of the Census, 1970 Census, Journey to Work, PC (2) -6-D.

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STATEMENT

OF

MUNICIPALITY OF METROPOLITAN SEATTLE (METRO)

TO THE

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

ON

S. 1160

Mr. Chairman, and members of the Subcommittee, the Municipality of Metropolitan Seattle (METRO) thanks you for this opportunity to make this statement. Metro has great interest in the content of S. 1160. On most aspects of the bill, Metro's position is fully represented by testimony presented by the American Public Transit Association.

There is one matter, however, on which Metro would like to add its individual comment. This concerns the bill's failure to offer amendments to Section 13(c) of the Urban Mass Transportation Act.

Metro is not opposed to the general purpose of that section, which we understand to be the protection of workmen who might be displaced or require new training, because of a technological change resulting from a federal grant. The administrative process, however, which has developed to affect this purpose has become a nightmare to transit agencies.

In simplified terms, the process involves a certification by the Department of Labor that there is in existence at the time an UMTA grant is made, a 13(c) agreement covering the grant. The purpose of this agreement was to clarify what steps management would take to care for any work displaced as the result of new capital purchased pursuant to a grant.

In carrying out its role, the Department of Labor has looked to the affected local union, international union, and the recipient for confirmation that such an agreement is in existence. If any of those parties for any reason decline to give that confirmation, the grant is held up. This process has been applied to both capital and operating assistance grants even though there can be no grounds to suppose that transit operators could be disadvantaged by operating grants.

It should be obvious that this creates a bargaining opportunity which can be and has been manipulated by the unions involved. For example, in order to receive its operating funds grant in 1980, Metro was required to agree to an addendum to the basic operating funds agreement which was negotiated several years ago.

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The effect of the addendum to which Metro had to agree or unacceptably delay the grant, makes it possible for the local union to require Metro to participate in interest arbitration on issues which would normally be the subject of collective bargaining between Metro and the union.

This pattern--of insisting upon additions or changes each time an application for a federal grant is made--is the rule, not the exception. We think it should be obvious and, in fact, is obvious to the transit industry as a whole, that the process developed to implement this act has created a monster that should be slain.

It appears to Metro that Congress should make it clear to UMTA and the DOL, either in legislation or otherwise, that: (1) it intends Section 13(c) to apply only to major capital grants; (2) that it is not intended to interfere with the process of collective bargaining or to usurp state law direction on matters of interest arbitration between public agencies and labor unions; and (3) that any 13(c) certifications required by UMTA or DOL be handled expeditiously with no delays resulting from any party requesting additions to the basic 13(c) agreement negotiated by the industry and the international union.

Thank you very much for your attention.

Neil Peterson
Executive Director

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1700 K St., N.W., Washington, D.C. 20006 • Area Code (202) 457-0710

STATEMENT

Submitted by the

NATIONAL ASSOCIATION OF REGIONAL COUNCILS

to the

SENATE SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS
COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS

May 27, 1981

Washington, D.C.

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The National Association of Regional Councils appreciates the opportunity to provide this statement for the hearing record on S. 1160, a bill which would reauthorize the Urban Mass Transportation Act until 1986.

NARC was initiated in 1967 to assist local government elected officials in organizing a rapidly growing number of regional councils. Regional councils for the most part are substate districts of general purpose local governments which encompass a total regional community. They exist in both metropolitan and rural areas. Over 650 regional councils have been established to deal with areawide problems. Approximately 160 large metropolitan regional councils with SMSA's of 50,000 or more in population are designated as Metropolitan Planning Organizations. As MPOs, they are public agencies responsible for urban transportation planning of mass transit, highways and airport systems.

Federal funds for transit since the program was enacted in 1964 have had a significantly positive affect on the way we live in urban areas. Mass transit has made us less auto-dependent which translates into less dependency on foreign oil; it has lured and retained businesses to locate within an urban center; and it has been, for many people, the sole means of transportation for employment, schooling and other necessary activities. The demand and the need for continued and improved mass transit services in our urban areas

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are there. These needs must be met if we want to continue in the same direction of energy conservation, urban renewal, and the assurance of mobility to jobs and to business centers.

Section 504 Elderly and Handicapped Regulations

Local option for transit for the handicapped as provided in S. 1160 is a positive step which would allow local areas to address the individual and special needs of the handicapped rather than a blanket policy requiring transit systems to be made fully accessible for handicapped users. This issue has been one of tremendous controversy over the past several years, and we are pleased to see that the Administration has made a concrete decision favoring the implementation of an alternative program which is locally determined.

One aspect of the provision concerns us. The language seems to indicate that the recipient of federal funds would be solely responsible for establishing a program based on locally developed criteria for providing services to the handicapped. We believe that any criteria setting forth a transit service for the handicapped should involve the affected local governments within the region working through their MPO, the transit and para-transit operators. Of course, handicapped groups should be consulted in this effort. A participatory and cooperative decision-making process is necessary to achieve a well-balanced consensus within the region. Local elected officials have already been involved

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through their MPO in developing transition plans as requested by DOT to meet Section 504 requirements. This involvement should continue.

Operating Assistance

S. 1160 provides for the elimination of federal operating assistance for transit in 1985. While we understand the Administration's philosophy that operating assistance should fall on the shoulders of the local jurisdictions and transit users rather than the federal government, we are concerned about the effect this action will have on the future of mass transit. If fares rise dramatically, ridership on public transportation will drop and commuters will revert back to their automobiles. Insofar as local governments raising more tax revenue to adequately fund their transit systems, many local governments have been limited in their ability to raise revenue especially from real property levies. We are all familiar to those structures such as propositions 13 and 2½ and similar limitation measures. Thus, some local jurisdictions may be left with virtually no alternative but to severely cutback on the amount of transit services provided to the public.

The loss of federal assistance to continue the operation of transit systems in which the federal government over the past several years has significantly invested will be a very serious problem for many communities. It could mean the loss of mobility for those who solely rely on public transportation.

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The idea of a block grant approach combining both capital and operating assistance which would allow local transit bodies to determine how to spend these funds has been suggested to your Subcommittee. Philosophically, NARC would support a more flexible approach as this proposal recommends. But our support would be conditioned on the assurance of a cooperative decision-making in each urban area. We would suggest that such decisions on what funds would be spent for capital, operating or maintenance be collectively made among relevant parties, including affected local governments within the region through the MPO, the transit operator and the state, if the state has a role provided under state law. Transit affects a total region and, therefore, decisions of this magnitude need to involve all the jurisdictions served and the local elected officials, as well as the transit operators must be involved in the fundamental use of these federal funds.

Furthermore, in any block grant approach, any ceiling placed on the amount of funds a recipient may spend on operating costs should be at least equal to the share of federal funds currently allowed for this purpose.

Section 3 Urban Discretionary Funds

One disturbing provision in S. 1160 is language which would change the present 80 percent federal match to a share "not to exceed 80 per centum of the net project cost." We believe Congress should continue to make this basic decision on matching requirements.

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Obviously, this language is intended to provide a federal match less than the present 80 percent. We believe that the provision will leave many local governments with projects already programmed in the out years at the 80/20 match in an extremely difficult and uncertain situation. Thus, we would urge that this language be eliminated from the bill and the present 80 percent matching level be retained.

Section 18

NARC is also concerned that the Section 18 program has a funding level reduced to $75 million per year and eliminates the operating assistance eligibility provision by September 30, 1982. We cannot support the elimination of operating subsidies for small urban and rural areas for fear that many public transportation services will be either severely cutback or eliminated altogether. Such action will have serious repercussions for citizens in sparsely populated areas who must solely rely on these public transportation systems.

In addition, we are also concerned that the state is exclusively responsible for developing a program of transportation projects under Section 18 without full involvement of affected local governments and substate planning agencies, if any exists. Local governments are closest to the people and should have a role in establishing transportation priorities in rural areas. While some states have done a good job in establishing a participatory decision-making process, many have not. Thus, we would recommend that language be added to provide that the state develop a state transportation plan which includes consultation by affected local governments and substate planning agencies.

We thank the Chairman for the opportunity to present NARC's viewpoints on S. 1160.

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STATEMENT OF

JERRY E. FELDMAN
PRESIDENT
INTERNATIONAL TAXICAB ASSOCIATION

BEFORE THE

HOUSING AND URBAN AFFAIRS SUBCOMMITTEE
OF THE
SENATE BANKING, HOUSING, AND URBAN AFFAIRS COMMITTEE

JUNE 5, 1981

Mr. Chairman and Members of the Housing and Urban Affairs Subcommittee, the International Taxicab Association (ITA) is a nonprofit organization which serves as the sole national spokesman for the taxicab industry in the United States. There are approximately 5,000 taxicab companies in the United States which operate over 270,000 vehicles and utilize 634,000 workers. The taxicab industry transports nearly 3.4 billion passengers per year, which represents approximately 40 percent of all surface public passenger trips. In over 2,000 communities, or 68 percent of all communities having public passenger transportation, taxicabs are the sole source of public transit.

ITA has previously testified before the Senate and House Appropriations Committees that it supports the Administration's proposal to reduce Federal spending in fiscal year 1982 and beyond. ITA commends the efforts undertaken by Secretary of

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Transportation Drew Lewis to redefine the Federal government role in transportation matters and to place greater reliance on the private sector to provide transit services. ITA believes that the private sector can provide better service at a lower public cost than the public and nonprofit entities which have been created to meet special transportation needs.

The International Taxicab Association generally supports the provisions of S. 1160, the "Transit Assistance Act of 1981." This bill appears to be a well thought-out proposal for allowing State and local governments and private mass transportation companies greater control over how local transit objectives shall be met. We also believe that this bill can serve to introduce needed and economical private sector participation into publicly-funded transit projects. There are two additions which we would suggest be made to the bill in order for it to meet its stated objectives. First, the private sector should be provided with additional protections against unwarranted competition from the public sector. Second, a provision should be included in the bill which would neutralize the existing incentive under the funding programs for grant recipients to purchase and operate rolling stock rather than to contract with existing private transportation companies who could provide the service more economically.

Past practices of public takeovers of private transportation companies have proven to be shortsighted and detrimental both to service and efficiencies. S. 1160 could very well serve

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to reverse this trend if it functioned so as to stop the creation of government-owned transit companies whose operating deficits are covered by Federal funds. This policy discourages the incentive to operate efficiently and to hold down labor and administrative costs.

As seen in this country and others, public transportation companies create unfair competition with the private sector, which cannot look to the taxpayers for a bonus at the end of the year to keep them operating in the black. The unfair competition generated by a duplicative publicly-owned mass transportation company serves to weaken the private transportation network. This historically has necessitated further government involvement in transportation services, as clearly evidenced by the commuter rail and bus situation in this country. The taxicab industry has fought to remain private and will continue to do so. It definitely has been a fight because of the enticement of "going public" and not having to worry about meeting a payroll and finding financing for equipment and facilities.

Existing sections 3(e) and 8(e) of the Urban Mass Transportation Act do provide some general protections for private operators against government encroachment on its responsibilites. Section 3(e) of the Act provides that no financial assistance shall be given to any State or local public agency for the purpose of acquiring any assets of a private mass transportation company, or for operating facilities or equipment in competition

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with such company unless the Secretary of Transportation makes certain findings. Section 8(e) of the Act provides that transit plans and programs shall encourage to the maximum extent feasible the participation of private enterprise.

Section 3(e), however, has been administratively interpreted as providing no protections against government competition to taxicab companies and other public transportation providers not meeting the definition of a "mass transportation company." This lack of protection for an important segment of the transportation network not only is unwarranted but is inconsistent with the policy of placing greater reliance on the private sector to provide transportation services.

This oversight in the Urban Mass Transportation Act may be remedied simply by including within the section 3(e) protections all private companies providing public passenger service. ITA urges the Committee to include such an amendment in S. 1160.

ITA urges a second amendment to S. 1160 since the manner in which a grant recipient may implement a transit program under the Act, as amended by the bill, appears to remain too restrictive. There would continue to be the incentive for a grant recipient to purchase and operate its own rolling stock even where it would be more economical to contract with an existing private transportation company for such service. Grant recipients would receive up to 80 percent of the cost of acquiring new equipment from the Federal government under the Act, while the funding for contract services would be severely reduced over the

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next few years until eliminated. ITA suggests that the bill would need to be altered only slightly in order to carry out the policy objectives of the Administration in this area. This can be done by providing that where a grant recipient contracts with a private transportation company for the providing of service, as an alternative to the grantee acquiring and operating its own rolling stock, any payments for such service would be considered a capital cost rather than an operating expense.

There are many benefits which would be realized by such an amendment. A grant recipient would not be encouraged to purchase its own equipment which it would have to maintain and hire employees to operate when the overall cost could be considerably less if it contracted for such service from a private company. Many of the vehicles purchased under the section 16 program for use in transporting the elderly and handicapped are operated on very limited schedules and thus have high fixed costs in relation to the number of hours operated. Moreover, in an effort to reduce the variable costs of operating these vehicles, grant recipients often employ only one shift of drivers with the result that the riders who should benefit from the section 16 program have service available to them only during limited periods. A contract with a company which already had the vehicles, or was willing to acquire them at its own expense, is economically superior to this practice. The grant recipient would only pay for the service it received, and the Federal government would be subsidizing only the user rather than the provider as well.

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Let's look at some figures. The Congressional Budget Office has found that adapting fixed-route transit systems to meet the needs of the elderly and handicapped results in an average cost per trip of such user of $44.00.[1/] The same study found that where grant recipients used existing taxicab services, the cost per trip for an elderly or handicapped person came to $4.50. The savings which can be realized by contracting with existing taxicab companies are clear. However, if grant recipients cannot use federal funds to contract for such services, they may choose to purchase and operate their own taxicab-type service since they could have up to 80 percent of these costs subsidized. This is not consistent with the stated policy of the new Administration, and it violates the rules of economics. But whenever government funds are available, the laws of economics are changed.

ITA urges this Committee to remedy this oversight in S. 1160 by providing that contract services with private companies, as an alternative to purchasing and operating rolling stock, will not be considered operating costs. This would be a cost-effective approach to the funding of mass transit programs, and it would allow greater private sector participation in transportation services.

1/ Congressional Budget Office, Urban Transportation for Handicapped Persons: Alternative Federal Approaches, November 1979; Testimony of Alice M. Rivlin on May 20, 1981, before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking, Housing and Urban Affairs.

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The final comment I would like to make relates to a matter which has not been addressed by S. 1160. Much of the testimony previously given before this Committee related to the serious financial consequences the labor protection provisions of the Act have had on local transit systems. This is a problem which must be addressed by this Committee if the transportation and economic policies of the Administration are to be realized. Section 13(c) of the Act has prevented transit authorities from implementing innovative and cost-effective measures which would provide better service to transit users and reduce the amount of Federal assistance needed. Section 13(c) also has prevented private enterprise from participating in transit programs as a result of the restrictive agreements grant recipients have had to enter into with their unions in order to qualify for Federal funding. Employment of a private firm where it could perform a job cheaper has often been blocked by the labor agreement between a grant recipient and the public employees. This is not how section 13(c) was intended to operate, and it is inconsistent with the clear and present need to establish an efficient and economical transit system in this Nation.

The International Taxicab Association urges this Committee to examine this problem and find a solution. We would be pleased to have the opportunity to testify before this Committee on the effects of section 13(c) on private enterprise at any time this Committee would find it to be appropriate.

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STATEMENT

By

REED LARSON, PRESIDENT
NATIONAL RIGHT TO WORK COMMITTEE

The National Right to Work Committee is a coalition of one and one-half million employees and employers, dedicated to the proposition that every American should have the right, but not be compelled, to join or support a labor union.

The legislation you are currently considering to reauthorize the Urban Mass Transit Act (S. 1160) contains a provision which has been used to circumvent state laws and to compel workers to accept unwanted unions. As a result, it actually reduces the intended benefits of the original Act. It is this provision of the Act -- Section 13(c) -- that I wish to address.

Section 13(c) requires the Department of Labor to certify all applicants for Urban Mass Transit Act funds as having "acceptable labor standards" as a condition of receiving the federal funds.

While the intent of this section was to guarantee that transit workers did not realize a worsening of their economic position when a local transit system went from private to public ownership, the provision has become a powerful weapon in the arsenal of union officials to gain additional compulsory unionism and monopoly powers.

The Department of Labor has interpreted "acceptable labor standards" in such a broad and arbitrary fashion that top union officials now have a virtual veto over the issuance of Mass Transit funds. We believe that this does not serve the public or the workers involved.

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Time after time, because of the interpretation of Section 13(c), the Department of Labor has refused to release federal funds to financially strapped transit systems, not because of any malfeasance on the part of the carriers, but simply and solely because those applicants did not adhere to the compulsory unionism guidelines set up by the union.

This has resulted in placing applicants for federal funds for their transportation systems in a Catch 22 situation. Not to bow to the compulsory unionism demands of union officials is a victory for principle. But for the transit system it is a victory gained at the expense of disruptive, deteriorating, curtailed commuter service -- and sometimes no service at all.

Yet on the other hand, to bow to the will of union officials is to play a part in the imposition of forced unionism on transit workers, many of whom prefer to remain free of union control.

In order to illustrate our specific objections to the interpretation and application of Section 13(c) of the Urban Mass Transit Act, I would like to cite several examples.

The city of Albuquerque, New Mexico was refused Mass Transit funds because the United Transportation Union disapproved of the contract its local union had signed with the city. On that basis alone, the Department of Labor denied the application. One of the criteria used to deny the contract was the lack of a compulsory unionism clause -- a clause the city of Albuquerque has no legal authority to negotiate.

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At first the city held fast, but after almost two years in a rapidly deteriorating transit system, city officials -- in the absence of state law -- caved in and signed the Section 13(c) "labor protection agreement."

This example graphically points out one of the major problems currently involved with the administration of the Act. As a matter of policy and procedure, the Department of Labor forwards applications to the international union headquarters. To quote from the Federal Register, Vol. 43, No. 63, March 31, 1978; "The Department of Labor believes that coordination of employee protection arrangements through international unions and affiliates of such unions greatly facilitates the order and expeditious processing of UMTA applications."

Thus, as a matter of procedure, the Department of Labor extends a literal veto over Urban Mass Transit applications to officials of international unions who have consistently demonstrated that collection of compulsory dues from unwilling workers is their overriding interest.

The city of Meridian, Mississippi, took over the transit operations from a private company in 1973. The company had been unable to make the system economically feasible.

When Meridian applied to the UMTA for operating funds, the Department of Labor immediately forwarded the request to top officials of the Amalgamated Transit Union (ATU). The union asserted that since it had represented employees of the private company at one time in the past, that such a monopoly bargaining relationship should be transferred to the city.

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A problem occurred since Mississippi law forbids the extension of monopoly bargaining privileges to public sector union officials. Contemptuous of state law, officials of the Department of Labor ordered Meridian city officials to extend monopoly bargaining privileges over public sector workers to the ATU.

Rather than knuckle under to the demand that it violate state law, Meridian has revoked its application and has been working to operate without the aid of federal funds provided in part by its own taxpaying citizens.

The experience of Macon, Georgia, again illustrates how the Department of Labor, in collusion with union officials, attempt not only to circumvent state law, but actually to establish systems whereby the law can be flouted.

Macon was informed that it must recognize the Amalgamated Transit Union and extend it monopoly bargaining privileges. When the city of Macon protested that this would be a direct violation of state law, Department of Labor officials recommended three alternative methods by which state law could be circumvented.

These various methods amount to nothing more than a cheap facade designed to "wink at" the intent of state labor policy.

In all three formulas -- known by Labor Department officials as (1) the Memphis formula; (2) a public benefit corporation; or (3) a transit authority -- the local government in question maintains all responsibility with the single exception of labor policies.

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It is estimated that at least 50 cities have been forced to accept one of the "alternative method" ruses in order to receive federal assistance.

One final example will clearly outline the extent to which union officials will go in trying to implement their special privileges granted in Section 13(c). In New York City, in a case which has not yet been decided, the Transport Workers Union is attempting to block a $131.9 million dollar grant for crucial subway repairs. The basis of their objection is that the federally funded repair work will be performed by private contractors rather than existing employees.

While union officials and the Department of Labor try to force the financially strapped New York City government to grant a total monopoly of all work on the transit system to the union monopoly, the health and safety of the riding public is placed in increasing jeopardy.

Abuses of the UMTA also exist in related areas. For example, the 1979 grant of $153,330 to a consortium of unions to "develop and demonstrate a training or educational program for local union representatives with respect to skills needed to carry out their responsibilities in collective bargaining contracts," amounts to nothing more than a taxpayer subsidy to union officials to enable them to further increase their monopoly power and compulsory unionism privileges.

In a March 1, 1977 editorial, the Albuquerque Journal, succinctly illustrates the effect of Section 13(c), not only as it is applied in that city, but as it impacts on the American

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public and workers everywhere. "The international union refused to accept the local union's agreement with the city so the DOL refused to certify the loan grant. The DOL's refusal will result in a cutback in city bus service beginning March 21, that will affect an estimated 2,500 riders a day and will result in the end of 10 to 15 jobs within the transit system. The bus riders of Albuquerque should not have to suffer because of the actions of a labor union that has been given virtual veto power over issuance of federal grants to transit systems such as Albuquerque's. Not only does it (interpretation of UMTA) delegate federal power to the union, it circumvents the intent of Congress which appropriated funds to help public transit better serve the public."

Albuquerque's top labor negotiator at that time, John Martinez, aptly described the Department of Labor and the union actions as "nothing more than blackmail. The city signs (the DOL consent order) or it doesn't get the money."

Mr. Martinez said it all. It's "nothing more than blackmail" -- the blackmail of hundreds of local transit systems by top union officials in Washington using funds provided by America's overburdened taxpayers.

In the interest of mass transit workers, the riding public, and the American taxpayer, I strongly urge you to repeal Section 13(c) of the Urban Mass Transit Act. By so doing, control over local and state labor policies will be returned to where they rightfully belong; in the states and localities and not in a Washington bureaucracy or union headquarters.

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NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036 202—797-6800

May 27, 1981

The Honorable Richard G. Lugar
Chairman
Urban Affairs Subcommittee
Senate Banking, Housing &
Urban Affairs Committee
5300 Dirksen Senate Office Bldg.
Washington, DC 20510

Dear Mr. Chairman:

The National Wildlife Federation, the nation's largest conservation organization with over 4.6 million members and supporters, appreciates the opportunity to express its views on S. 1150, the Transit Assistance Act of 1981.

S. 1150 is the Administration's transit proposal. It reflects a general skepticism towards federal participation in transit programs, particularly in times of budgetary restraint. The President's observation that citizens in Des Moines should not have to pay for citizens in Los Angeles to ride public transportation has gained wide circulation. The OMB "Black Book" describing the policy framework underlying the President's Program for Economic Recovery claims that the national benefits of public transit are too long-term and too tenuous to justify the level of transit assistance proposed by the previous administration. The Heritage Foundation analysis of DOT programs contained in Mandate for Leadership (Heatherly, ed. 1980) also questions the value of federal transit assistance. Finally, Edwin L. Harper, Deputy Director of OMB, recently addressed an international symposium of transit specialists and expressed serious doubts as to whether federal transit assistance can be justified on any grounds, including economic development, equity, energy, environment, or contribution to urban form.

This critical review of our federal transit assistance program is timely, needed, and welcome. We believe that such a review will establish beyond a doubt that there is an important federal interest in the protection and expansion of our existing

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mass transit network. It is for this reason that we support a stronger mass transit capital assistance program than is reflected in this proposed legislation.

Clearly, hard times force hard choices, and transit programs must share the burden of budget cuts. These cuts, however, should be concentrated in the area of operating assistance, not capital and maintenance. Reductions in transit capital and maintenance assistance are as unwise and as shortsighted as a decision to let our Interstate System deteriorate. It will inevitably lead to deferred maintenance, increased long-term capital costs, and great local hardship for urban areas unable to maintain their existing transit systems. New York City alone estimates that it needs an $800 million annual capital investment to prevent further deterioration of its system.

These capital requirements will not come from the private sector, nor from state or local government. UMTA Administrator Arthur Teele pointed this fact out in recent Congressional testimony:

> It is clear that without the availability of federal capital assistance, it would be virtually impossible for communities to meet periodically large financial demands that capital projects require. Capital assistance allows orderly vehicle replacement programs which might otherwise be difficult given the fluctuations in local financial situations and the current constraints on many local budgets.*/

If we are to adequately protect our existing national investment in mass transit systems, we must eliminate the cuts in capital assistance reflected in S. 1150. These cuts are dramatic, as demonstrated by the following comparison between S. 1150 and the proposed transit legislation submitted by the Carter Administration in January of this year:

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*/ Testimony of Arthur E. Teele, Jr., before the Subcommittee on Transportation, House Appropriations Committee, May 1, 1981.

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(all numbers in billions of dollars)

	1981	1982	1983	1984	1985	1986
Section 3						
Carter	2.190	2.625	2.775	2.93	3.09	--
S. 1150	1.515	1.725	1.615	1.75	1.90	2.0
Reduction	-.675	-.900	-1.160	-1.18	-1.19	N/A
Section 5						
Carter	N/A	1.925	2.055	2.165	2.275	--
S. 1150	N/A	1.480	1.135	0.815	0.500	0.550
Reduction		-0.445	-0.920	-1.350	-1.775	N/A

This computes to a reduction in discretionary authorizations of $5.034 billion and in formula authorizations of $4.49 billion through FY 1985, or a total cut of $9.524 billion. This represents cuts totalling more than the entire proposed authorizations in S. 1150 through FY 1986 of $8.99 billion.

Our transit systems do not deserve and cannot afford this level of reduction in federal assistance, which amounts to over a 60% decrease in combined discretionary and formula assistance through FY 1985. It is our position that a reasonable compromise is to fund the capital program at the level proposed by the Carter Administration while phasing out operating assistance as proposed by the Reagan Administration. Moreover, we support the concept of block grant programs for both rail and bus systems, for use at local option for either capital or maintenance. The definition of maintenance, however, must be strictly defined to prevent the siphoning off of such funds to defer operating expenses. This approach would emphasize the capital program while assuring maintenance of the federal transit investment, and would revise the authorization levels as follows:

	1982	1983	1984	1985
Capital (Section 3-Carter)	2.625	2.775	2.93	3.09
Operating (Section 5-Reagan)	1.480	1.135	0.815	0.500
Combined capital and maintenance authorizations	4.105	3.910	3.745	3.59

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This would result in a total capital/maintenance authorization through FY 1985 of $15.35 billion, squarely between the Carter proposal of $19.84 billion and the Administration's proposal of $8.44 billion.

In conclusion, we must emphasize the significant federal interest in healthy mass transit systems. These systems help shape urban development, thereby directing development along transit corridors. Well-planned, dense-center oriented systems can promote urban revitalization, protect prime agricultural land, accelerate attainment of national clean air standards, and save energy. We recognize that there is serious skepticism within the new Administration of these claims. It is a skepticism that was shared by the Carter Administration in 1977. It is based, however, on our previous national failure to promote these national objectives in the selection and design of transit projects. Good planning can reap substantial national rewards. We attach, with a request that it be made part of the record, a critique of the energy-saving potential of mass transit systems. Transportation accounts for 56% of all petroleum consumption in the United States and the relative energy efficiency of alternative transportation investments should therefore be the driving force behind our national transportation policy.

We appreciate the opportunity to present our views on S. 1150.

Very truly yours,

David G. Burwell
Counsel
Resources Defense Division

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THE ENERGY CONSERVATION POTENTIAL OF MASS TRANSIT

Growth management is the linchpin to achievement of energy efficiency in urban transportation. With growth management, energy efficient urban transportation systems can be developed to support healthy commercial, industrial and residential communities through reduced pollution (air, water, noise), revitalization of the urban core, equitable distribution of transportation services, and protection of open space and farmland from urban sprawl. Without growth management, no transportation system, however efficient, can promote these public objectives.

Does transit facilitate growth management? To date federal transit programs have not demonstrated an ability to manage growth while also providing efficient movement of people and goods. Responsibility for this poor record can be traced to two fundamental defects in our transit assistance programs: poor planning and competing subsidies. At the outset of our national transit program in the early 1960's, our planning approach to transit mirrored our approach to the space program: think big. It was a time of master plans, Great Societies, and spaceship design. Expectations were high--too high--while our perceptions of costs and consequences were too low. President Johnson gave only one instruction to the planners of the Washington Metro system--"build it monumental." We are now reaping the consequences of this approach in cost overruns, high operating deficits and poor energy efficiency.

We made a similar mistake in the area of cross subsidies. Since the early 50's we have subsidized activities that promote sprawl and make profitable transit an impossibility. These subsidies include federally assisted, low-interest loans for home construction, federally-assisted

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highway construction, and federally-assisted sewer construction. Roads are still underpriced, paying neither property taxes, depreciation, or return on investment, while any private transit operation is saddled with these costs. In this climate, private transit could not and did not survive. In 1950 transit accounted for 20% of all urban passenger miles traveled. By 1973 this figure had declined to 2.5%. During the same period the percentage of total transportation energy demand consumed in urban passenger transportation increased from 22% to 50%. Since this energy is used almost entirely to propel automobiles, it almost entirely represents petroleum consumption.

William T. Coleman, during his tenure as Secretary of Transportation, observed "in the next twenty years we will not so much learn to do new things as we will learn to do things we previously did poorly, well." Grandiose master plans have been scrapped. In 1976 UMTA officially reversed its position on transit assistance by adopting a policy that emphasized "incrementalism"--segment-by-segment improvement of cost-effective transit links over large-scale total system proposals.[1] Moreover, the Reagan Administration has announced substantial reductions in each of the subsidy programs that adversely affect transit systems--housing, sewer construction, and road construction.

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1. 41 Fed. Reg. 41512--41514 (Sept. 22, 1976).

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In short, this administration, and previous Republican administrations, have sharply reduced the handicaps under which transit systems historically operated. Therefore, a poor record of transit performance in the achievement of national objectives is not conclusive of the issue whether these programs, if managed correctly, deserve national support.

The general skepticism of the ability of transit to promote national objectives is most precisely articulated with respect to energy. The OMB "black book" that explained the policy framework underlying the President's Program for Economic Recovery justified severe cuts in the transit capital budget on the ground, inter alia, that "energy savings that can be attributed to mass transit capacity expansion are extremely limited, especially when the energy costs of construction are considered." With respect to new rail fixed guideway projects, OMB was even more specific: "Energy savings may not exist at all; or they may be so deferred into the outyears as to be meaningless for solving our immediate energy problems." In a recent speech to a group of transit specialists, Edwin L. Harper, Deputy Director of OMB, stated that "As energy savers, the benefits of constructing new rail systems do not seem to be worth the tremendous cost." The Heritage Foundation, in Mandate for Leadership: Policy Management in a Conservative Administration, (Heatherly, Ed, 1980) claimed that "If the central objective were to become moving as many people as cheaply and with as little energy as possible, other methods might prove more productive and cost-effective (than transit)." This view is shared by the new team within DOT, and even within UMTA.

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Ironically, the present administration's perception of the energy-saving potential for mass transit mirrors the attitude of the Carter administration in 1977. This perception is based on two studies, both published in 1977, which asserted that rail rapid transit may be a net energy loser. These studies--one by the Congressional Budget Office (CBO)[2] and another by Professor Charles Lave[3] of the University of California, Irvine--focused their analysis almost entirely on the BART, WMATA and MARTA systems. Since, at the time these analyses were published, UMTA had officially rejected this large-scale systems approach to rapid rail funding, they are of more value as post-mortems of previous mistakes than they are as analytical tools for present policy formation.

Nevertheless, the CBO and Lave Reports are now resurfacing to justify a federal retreat from transit funding. Even assuming the federal government were still pursuing a transit program that emphasized system-wide rapid rail over combinations of rapid rail, light rail, trolleys, buses, and paratransit, these two studies are so limited in scope and so dependent on unreliable assumptions as to severely compromise their analytical value. These limitations can be split into two general categories: (1) direct energy use, and (2) growth-shaping and behavioral effects with energy-saving consequences.

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2. Urban Transportation and Energy: The Potential Savings of Different Modes, Congressional Budget Office (Dec. 1977).

3. Lave, Charles A., "Rail Rapid Transit and Energy, the Adverse Effects." Transportation Research Record, No. 648 (Washington, National Academy of Sciences, 1977).

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Direct Energy Use

The CBO report attempted to account for virtually all the energy expended in the construction, operation, maintenance, and administration of a rapid rail system, express that use in terms of BTUs per passenger mile traveled, and compare that use to existing energy consumption per passenger mile traveled. The conclusion was that construction of a rapid rail system in a metropolitan area with no previous public transit system would be a net energy loser in the amount of about 980 BTU/passenger mile while a bus transit system would be a net energy saver of about 3590 BTU/passenger mile. The Lave report did a similar study, focusing exclusively on the BART system, and concluded that BART would never carry enough passengers to achieve a net energy saving.

Even before the CBO report was published in December, 1977, UMTA prepared a critique that shot several holes in the CBO analysis. The critique conducted a sensitivity analysis to determine how sensitive the conclusions of the report were to assumptions regarding circuity (length of total transit trip versus most direct route), passenger diversion (extent and source of passengers diverted to transit), vehicle occupancy, and vehicle propulsion energy. In each case, the report found that the CBO assumptions about each of these variables was highly suspect, and that different assumptions forced significantly different conclusions.

The UMTA rebuttal is attached ("A"). However, a few specifics will highlight several problems with the CBO report. On circuity, the CBO assumed that the total transit trip (including access to the transit station) would be thirty percent longer than if the trip were taken by private automobile. This figure was based on the study of only one rapid

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rail situation (unnamed). The extent of circuity is very dependent on the particular densities and form of the urban area served, as well as the extent of service provided. Holding all other factors constant, a 17% improvement in circuity would make rapid rail an energy saver under the CBO methodology.

Evaluation of the other factors gave similar results. While CBO assumed only 35 percent of rail passengers would be diverted from cars, a 49 percent figure would make rapid rail an energy saver. A recent study of the South Shore rapid rail extension in Boston indicated that 81 percent of the new riders came from automobiles. On vehicle occupancy, CBO assumed an average of 21 passengers per vehicle-mile based on statistics from BART and the Lindenwold line in Philadelphia. However, the figure for Lindenwold used by CBO (22.5 pm/vmt) was disputed by the manager of the system (who gave a figure of 25.34 pm/vmt), the national average is 24.5 pm/vmt, and many of the older, more ubiquitous systems have even higher occupancy rates (Philadelphia is 28.8 pm/vmt). With all other CBO factors constant, the energy break-even point is about 27 pm/vmt. On vehicle propulsion energy, CBO assumed 75,000 BTU/VMT based on four systems that ranged from 56,000 BTU/VMT to 117,000 BTU/VMT. With such a range of values, the use of average values is highly suspect. Assuming all other CBO factors, the energy break-even point was 53,600 BTU/VMT, slightly below the figure for Chicago (52,000) and near the figure for New York City (58,000).

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These sensitivity studies highlight the unreliability of the CBO assumptions. They also highlight the importance of planning. Whether transit assistance promotes or defeats national objectives depends on how significantly these objectives influence decisions on system routing, as well as level and type of service. Planning can structure combinations of improvements in each of the variables listed above to meet the needs of particular urbanized areas while promoting national energy objectives.

An additional defect in the CBO and Lave analyses was recently identified by two of Charles Lave's associates at the University of California, Irvine, who pointed out that there were significant data gaps on the energy use characteristics of the modes that compete with rapid rail. While all the support costs of rapid rail were included in Lave's computations, the same was not done for commuter rail, bus or autos. These gaps are identified in the attached table ("B"). Their conclusion:

> Without such data as the energy to maintain automobiles, or to heat, light and power such ancillary facilities as gas stations, home garages, auto show rooms, and parts and supply stores, as well as to construct and maintain highways and parking facilities, the total energy per passenger mile characteristic of the automobile mode cannot be determined.[4]

Fielding and Thompson also pointed out that CBO and Lave assumed the level of service (frequency of service in terms of waiting time between trains) would be constant over the life of the project. This is not

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4. Fielding, Gordon J. and Gregory L. Thomson, "Questions Regarding Transit's Energy Effectiveness" (unpublished paper, May 1981).

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necessarily so, and the authors point out that increased service attracts new riders so that vehicle occupancy rates remain high. Also, by scheduling very high service levels at times of peak demand while reducing service at times of low demand, a system can be managed to substantially increase its energy efficiency (albeit at a cost of service, and perhaps revenues, in times of low demand). By computing the missing data, scheduling service to maximize energy efficiency, and providing high levels of service in dense corridors, Fielding and Thompson concluded that BART's break-even point for return on energy investment could be reduced from the over 500 years indicated by Lave to fewer than 20 years. Also, total system energy use for all modes could be reduced over a period of years by 27 percent, a significant savings. This saving increases in significance when it is observed that the energy conserved is virtually all petroleum (since over 96% of present urban transportation energy consumed is petroleum) while the energy used to propel a transit-oriented system will be largely in the form of electricity. Assuming, in this transit-oriented system, 20% of all passenger-miles are conducted by transit, petroleum-based transportation consumption is therefore reduced by over forty percent. Energy savings of this magnitude have clear national significance.

Finally, there are technological improvements to rapid rail vehicle propulsion that promise significant increases in the energy efficiency of these systems in the relatively near future. Flywheel energy storage systems and regenerative braking systems "store" the inertial energy of rapid rail vehicles lost in braking and "reuse" it for acceleration. Although this technology is still being developed, savings

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in the area of 15-40% of total propulsion energy may be possible in the near future.

Indirect Energy Effects

There are also significant indirect energy-saving effects of mass transit that are not reflected in a straight BTU-per passenger mile traveled computation. These include 1) growth shaping effects, 2) the "chauffering" effect, and 3) avoidance of generated travel.

The growth-shaping effect merely recognizes the obvious fact that there is a symbiotic relationship between development and access. Access is improved to serve development (road-widenings) and development is spurred by access (Rte. 128 around Boston). The same is true for transit. If an outer-beltway is exchanged for a center-oriented transit system, growth will be directed inward. This will increase densities, making transit more attractive and reducing the length and number of trips required to meet transportation demand. This elementary effect, however, was totally ignored in the CBO report:

> The quality of available transportation is one of the forces shaping urban development, albeit a force that is notoriously difficult to isolate. Nevertheless, any shift in transport policy that facilitates long-distance travel may direct growth so as to create more such travel, and any policy that makes it easier to move in congested central parts of the cities may lead to more concentrated growth and correspondingly shorter trips....[However] it should be noted that no developmental effects have been taken into account in making the estimates presented here. (emphasis supplied).[5]

5. CBO Report, op. cit., at 40-41.

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What the CBO report did was simply take an existing auto-oriented system, superimpose a rapid rail system on it, and calculate how trips would be made assuming everybody continued to live and work at the same place as without the system. This, of course, is absurd.

Second, the CBO study ignores what could be called the "chauffering" effect, where one transit trip replaces more than one auto trip. For example, if a parent drives a child to school and picks the child up, six person-trips are generated (2+1+1+2=6). However, if the child takes public transit to school, only two person-trips are generated. The CBO calculation, which calculated the energy efficiency of trips actually taken, ignores the energy saving consequences of trips avoided as a result of transit operation. Moreover, since the "chauffering" effect is caused by the fact that "chaufferees" have no independent access to the existing transportation system (i.e., they don't drive a car) reduction in this effect promotes equity in distribution of transportation services as well as energy efficiency. This group primarily consists of the poor, the young, and the elderly.

Third, the CBO AND Lave reports ignore the elementary fact of generated travel. Generated travel is either a trip that would not have been taken at all if the transportation improvement were not constructed, or a trip that is diverted from another transportation corridor as a result of the improvement. It is well accepted by transportation planners that time of travel, not length of travel, is the determining factor in both the decision to take a trip, and the route chosen. All transportation improvements reduce required time of travel, thereby increasing the overall level of mobility--number of trips taken. But it

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appears that highway improvements have a relatively greater effect on trip generation than transit. Highway construction encourages more trips, over longer distances, in a less energy-efficient vehicle (per marginal trip taken). The attached chart ("C") documents the effect of "generated travel" on total transportation energy consumption. It concludes that an investment of $5 billion (1975 dollars) in highway construction would result in a total energy consumption of 2157 x 10^6 gallons of gasoline over the life of the project, while the same investment in mass transit or rail systems would consume only one-sixth that amount of energy (362 x 10^6 gallons of gasoline equivalent). The argument could be made that for a $5 billion highway investment you get more transportation capacity than you do for a $5 billion investment in rail capacity but, at least in urban areas where these two modes compete, the argument has little validity. The $2.0 billion required for construction of the 4.2-mile Westway project will provide much less net capacity than if the funds were used to improve the city's existing transit capacity.

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6. CEQ, op. cit., at 40.

7. Cheslow, Melvin D., Potential use of Carpooling During Periods of Energy Shortages, "Conditions in Transportation Energy Contingency Planning," Special Report #191 Transportation Research Board, (Wash., D.C. 1980), p. 38.

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Finally, statements by members of the new administration reveal a preference for carpools and vanpools as a means of promoting transportation energy efficiency. While vanpools and carpools can yield substantial energy savings in terms of BTUs per passenger mile traveled, this computation overlooks two very relevant factors. First, vanpools and carpools traveling in HOV (high-occupancy vehicle) lanes stimulate long-distance travel, similar to any other improvement in transportation capacity. The CBO recognized this fact:

> Thus, insofar as expansion of vanpooling or express bus service leads to longer trips, the energy savings per passenger-mile of these modes may be offset somewhat by increases in miles traveled, while the opposite may hold true for rapid rail, light rail, or personal rapid transit systems that serve downtown areas.[6]

However, due to the inability of transportation models to compute the relative effect on total energy consumption of transit versus vanpool/carpool improvements, this effect was simply ignored in the study.

Second, the energy efficiency of vanpools overlooks the problem of consumer resistance. Simply because we create HOV lanes and fund carpool and vanpool programs doesn't mean people will use them. During the last two gas shortages of 1973-1974 and 1979 much larger volumes of travel shifted to unused transit capacity than to car and van pools, despite major public and private efforts to encourage vanpools and carpools.[7] Thus, the energy savings of a particular mode cannot be evaluated in the absence of an evaluation of the relative opportunity or inopportunity for

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6. See page 11.

7. See page 11.

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shifting traffic to or from that mode. Bicycle transportation is extremely efficient, but the opportunity for shifting large amounts of travel to that mode is very small. This problem cannot be ignored when evaluating a policy of reliance on carpools and vanpools as the basis of a federal transportation energy conservation strategy.

Conclusion

The defects in the CBO and Lave reports are fundamental, and disqualify these studies from consideration in the formulation of a national transportation energy strategy. But will a transit-oriented strategy really save energy? The proof of the pudding is in the eating, and the most significant evidence in support of the energy efficiency of mass transit is to look at areas where a transit-oriented approach has been adopted. Western Europe is such an area and, as pointed out in the attached chart ("D"), Western Europe uses only 34% of the transportation energy per capita as does the United States. Since it is an area with a similar standard of living the comparison is particularly appropriate, and reveals much room for improvement in transportation energy efficiency.

Finally, it may be asserted that there is indeed a federal interest in transit but, in times of budget restraint, this interest must take a lower priority. We agree with that view to the extent that it calls for a phasing out of federal operating assistance. But, if applied to the capital program, the federal government loses more than it gains. Transportation policy cannot be made in a vacuum, and cannot ignore the

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consequences of 65 years of government transportation assistance since the first Federal-aid Highway Act was enacted in 1916. A decision to reduce transit capital and maintenance assistance is a decision to continue to rely almost entirely on a petroleum-oriented, energy-inefficient, 3.7 million mile highway system to meet virtually all transportation demand. It is false economy, just as it is false economy to continue to drive a 10-year-old "gas-guzzler" because of the cost of a Chevette.

We will continue to rely primarily on highway transportation to meet transportation demand for the indefinite future, but we must make a firm commitment to a transit alternative. Since transit energy is primarily electric energy, the strategic importance of a healthy transit system in times of petroleum shortages cannot be overlooked. For these reasons, a strong federal capital transit assistance program deserves vigorous support.

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Department of Transportation's Answers to Subsequent Written Questions of Members of the Housing Subcommittee

Cranston 1

SECTION 504 REQUIREMENTS FOR PROVIDING ACCESSIBILITY TO DISABLED PERSONS ON MASS TRANSIT

QUESTION: What analysis has DOT done with respect to the types of communities that have had difficulties with these regulations?

ANSWER:

DOT is aware that a number of cities are concerned with the Section 504 regulation. To illustrate, during 1980 and 1981 the Department received approximately 60 requests from transit agencies or cities for exemptions from the regulation based on their preference for providing special door-to-door van services for persons in wheelchairs. Among the reasons cited for opposing mainline accessibility are (1) costs of installing and maintaining lifts; (2) the difficulty persons confined to wheelchairs have in reaching bus stops, in view of terrain, lack of curb cuts and weather conditions; and (3) the view that door-to-door van systems would serve more persons in wheelchairs at a lower cost.

There has also been a significant number of complaints from the cities with existing rail systems concerning the large amounts of capital resources that would be necessary to make these systems accessible to handicapped persons. Recent estimates prepared under a study mandated by the Congress showed that capital and operating costs for rail transit accessibility might range from $1 billion to $4 billion over 30 years. (An Evaluation of Making Rail Transit Systems Accessible to Handicapped Persons, January 1981.)

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Cranston 1(B)

SECTION 504 REQUIREMENTS FOR PROVIDING ACCESSIBILITY
TO DISABLED PERSONS ON MASS TRANSIT

QUESTION: Do those communities fall into specific categories or size or region?

ANSWER:

The cities which have requested exemptions are located throughout the country and range from urban areas of over a million in population to cities with populations of 50,000 or less.

Cranston 1(C)

SECTION 504 REQUIREMENTS FOR PROVIDING ACCESSIBILITY
TO DISABLED PERSONS ON MASS TRANSIT

QUESTION: What other data does DOT have on file with regard to the communities that have expressed dissatisfaction with the section 504 regulation as it pertains to mass transportation.

ANSWER:

Many cities have written to the Department since issuance of the 504 regulation in May of 1979. However, the greatest concerns have been expressed primarily by those cities which already operate door-to-door services and which obtained the support of local organizations representing handicapped persons to seek exemptions from the regulation.

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SECTION 324 AND ALTERNATIVE PLANS TO MEET
TRANSIT NEEDS OF HANDICAPPED PERSONS

QUESTION: Section 324 of Public Law 96-400, making appropriations for the Department of Transportation and related agencies for fiscal year 1981, provides an option to recipients in certain instances to provide alternative plans to meet the mass transportation needs of disabled persons. Please state the number of recipients that have chosen to exercise the local option approach as authorized under section 324 and provide information with regard to the population and geographic region of the service area of each recipient that exercised the option authorized under section 324.

ANSWER:

To date, only one alternative service plan authorized under section 324 has been submitted for the approval of the Secretary of Transportation and the concurrence of the Architectural and Transportation Barriers Compliance Board. The plan was recently submitted by the Rochester-Genesee Regional Transportation Authority Department of Transportation. R-GRTA provides public transportation services within the four-county Genesee-Finger Lakes area in upstate New York with major emphasis on the urbanized area in and surrounding Rochester, New York. The population of the urbanized area is, according to the 1970 census, 601,361.

The failure of other recipients to exercise the option authorized by section 324 may reflect the recipients' awareness that section 324, which was intended to limit the expenditure of funds by DOT, does not immunize recipients of DOT funds from private lawsuits by handicapped persons. UTMA believes that this is the primary reason why no other plans have been submitted. Other possible reasons are: the service required of the large cities by section 324 is more burdensome than current requirements because the cities may have to make the fixed route system accessible and provide alternative service as well, and the limited protections afforded by section 324, unless reenacted annually, will expire at the end of the fiscal year.

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Cranston 3(A)

TRANSIT LOCAL OPTION

QUESTION: What protections would Section 108 of S. 1160, the Administration requested bill, provide so that a recipient-approved option would not entail types of services impractical for most disabled persons for most of their transit needs?

ANSWER:

The primary protection for handicapped persons under the Administration's local option provision is that decisions will be made locally with the involvement of handicapped persons. Local handicapped persons will have an opportunity to make their needs known to the recipient of UMTA funds so that their views can be considered in the local development of the service criteria. The service criteria will be determined locally rather than mandated by Washington.

We expect this local political process to result in service that is better able to meet local needs than the current Section 504 mainstreaming requirement. The current requirement may make transit equipment accessible, but it does nothing to help handicapped persons who cannot get themselves to the transit stop. The current requirement has many impractical aspects.

A further protection is that the recipient must certify that the service being provided meets the locally developed criteria. A willfully false certification is punishable under Federal criminal law (18 U.S.C. 1001).

Finally, if after certification handicapped persons find a pattern of service that fails to meet local criteria, they can seek a court order directing the grant recipient to request withdrawal of the certification. Once certification is withdrawn, the recipient is required to meet the applicable requiremnts of Section 504 until a new certification is given.

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Cranston 3(B)

FUTURE OF ALTERNATIVE TRANSIT SYSTEMS
FOR DISABLED AND ELDERLY INDIVIDUALS

QUESTION: In light of the recent and proposed federal budget cuts and the increased fiscal pressures upon state and local governments, what assurances would there be under section 108 that alternative transit systems would continue to serve the needs of disabled and elderly individuals in the future?

ANSWER:

We believe that the State and local communities should have responsibility for the operation of mass transportation systems and the determination of what services best meet the needs of disabled and elderly persons.

The primary assurance regarding the quality of service for handicapped persons is the local political process. State and local elected officials control the transit systems that they subsidize. Handicapped persons are afforded an opportunity to participate in a public hearing and comment process to make their views known to elected officials and to the transit operators. The recipient of UMTA funds then has the authority and the responsibility to develop a transit program that meets local needs.

We believe that services developed using the local decision-making process are more likely to meet the basic transportation needs of handicapped persons than the current mainstreaming requirement. The current requirement does not help a handicapped person who cannot get to the transit stop.

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TRANSIT GOALS OF REAGAN ADMINISTRATION

QUESTION: The Administration proposes an overall reduction in transit spending -- for capital as well as operating -- especially in comparison to the last Administration's proposals to use windfall profits tax revenues to fund transit capital investment. Can you at this point articulate the Reagan Administration policy with respect to mass transit, i.e., what goals would you expect to accomplish and how do these goals relate to the legitimate needs of our transit systems and our cities.

ANSWER:

The new authorization bill does in fact propose to scale-down Federal spending for capital and operating assistance when compared to legislative proposals put forth by the previous Administration. It is part of the philosophy of this Administration that decreasing Federal expenditures is the best way to stimulate economic recovery, which is our primary goal. In this context, using additional taxes such as the Windfall profits tax to increase revenues for transit would be counter-productive. Transit is primarily a local concern. In view of this, we believe that in terms of financing and programming, state and local governments should have greater responsibility. Still, our proposed Federal program will remain strong and vital and can continue to provide capital assistance to improve and maintain existing systems.

The basic program goal of UMTA is to improve the economic and operating performance of proven transit systems that are heavily utilized and thereby demonstrably contribute to urban economic systems. Operating performance can be improved by decreasing the backlog of deferred maintenance. Our new legislation includes a provision that is designed to encourage a more concerted effort by grantees in the maintenance area. In the

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long run, the improvement of existing equipment will help improve economic performance of the system. In the short run, increases in the share of operating expenses paid by transit users and by State and local jurisdictions can improve economic performance by increasing financial responsibility. Also in the short run, relief from unnecessary and costly Federal regulations will show up in reduced costs for transit services. UMTA has withdrawn three regulations: Bus Stockpiling (40 CFR 639), Bus Rehabilitation (49 CFR 640), Urban Initiatives (49 CFR 642). UMTA's eleven existing regulations and other burdensome requirements will be reviewed over the next year to determine if they are still necessary.

The Federal Government has a responsibility in discovering and testing out cost-saving new ideas in operations and management, and disseminating the most promising ideas to the transit industry. These efforts will continue to focus on issues that are important in the context of reduced Federal operating assistance.

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IMPACT OF PHASE-OUT OF FEDERAL OPERATING ASSISTANCE ON FARES AND RIDERSHIP

QUESTION: This proposal was originally submitted to Congress in March. Has the Department had time to do any detailed analysis of the impact on fares and on ridership of the phase-out of Federal assistance?

ANSWER:

We have done some preliminary analysis for two cases. In the first case it is assumed that all lost Federal revenues are recovered from the farebox. In the second case we assumed that half of lost Federal subsidies are recovered from the farebox and half are made up with increased state and local subsidies. The assumptions in both cases are for analytical purposes only and illustrate what would happen to fares under very specific assumptions. These assumptions in no way imply that systems should recover any fixed percentage of lost Federal revenues from the farebox or that the fare increases associated with these cases are probable. Fare increases in selected cities for the two cases are summarized on the following table.

The fare increases shown on this table are based on certain assumptions about the relationship between fare increases and ridership loss. In particular, for systems with more than 1000 vehicles it was assumed that ridership would decrease by .2 percent for each 1 percent increase in fares. For systems with less than 1000 vehicles it was assumed that ridership would decrease by .3 percent for each 1 percent increase in fares. Estimating potential ridership loss, however, is a highly speculative exercise that is sensitive to a number of factors including trends in economic activity and the price of gasoline. Therefore our assumptions

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about ridership loss should be viewed as analytical tools and not as predictions.

In fact we believe that most transit systems would respond to the phase-out of Federal operating subsidies with more than fare increases and increases in state and local subsidies. It is likely that systems would respond with management improvements, cuts in marginally productive service, and changes in work rules and labor contracts. It is likely, therefore, that fares would increase less than is shown on the table. In the final analysis fare levels and ridership will be based on local decisions, which have yet to be made.

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Increase in Base Fare Necessary to Replace 100 Percent and 50 Percent Federal Operating Subsidies With Farebox Revenues in Selected Cities 1/

System	Current Base Fare	Base Fare Nec. to Replace 100% Fed. Assistance	Average Ann. Fare Increase through FY '85	Base Fare Nec. to Replace 50% Fed. Assistance	Average Ann. Fare Increase through FY '85
NYCTA (New York City)	60 cents	77 cents	4.3 cents	68.5 cents	2.1 cents
CTA (Chicago)	80 cents	$1.12	8 cents	96 cents	4 cents
SCRTD (Los Angeles)	65 cents	$1.19	13.5 cents	92 cents	6.8 cents
SEPTA (Philadelphia)	65 cents	$1.37	18 cents	97 cents	.9 cents
WMATA (Washington)	60 cents	$1.27	16.7 cents	94 cents	8.4 cents
MBTA (Boston) - Bus	25 cents	43 cents	9 cents	34 cents	4.5 cents
MBTA (Boston) - Rail	50 cents	86 cents	4.5 cents	68 cents	2.3 cents
Metropolitan Dade County Transit Authority (Miami)	75 cents	$1.13	9.5 cents	94 cents	4.8 cents
TRIMET (Portland)	65 cents	96 cents	7.8 cents	81 cents	3.9 cents
BART (San Francisco)	50 cents	56 cents	1.5 cents	53 cents	.8 cents

1/ These estimates are based on revenue and expense data from the Section 15 Reporting System.

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SHIFT TO GROWING CITIES

QUESTION: If we end Federal operating assistance, but continue a strong Federal program of capital assistance, what will the impact of this shift be on the long-term development of transit service? Will there be a shift in the allocation of Federal assistance among geographic areas to cities that are experiencing rapid growth and have strong tax bases to support transit operations?

Would the effect of such a shift be to discriminate against the poorer cities and States in transit assistance since they would be least able to cover their operating costs?

ANSWER:

The level of local and State support for transit is generally not a function of local wealth or the growth rate. Rather, it is a function of the transit system's actual or potential contribution to the local economy, as reflected in the proportion of commuters utilizing transit instead of the automobile. The Federal operating assistance program to date has provided financial relief to cities in which transit plays a vital role. That is, if the Federal assistance had not been available, there is reason to believe that local jurisdictions would have made up the difference. In cities where transit's role is least critical, indications are that Federal subsidies have often encouraged unnecessary or overly costly new service. There are cases in which by encouraging unwise investment in transit, the Federal government may have contributed to the fiscal impoverishment of small cities.

Therefore, we expect our program to help restore appropriate levels of transit services and the rational allocation of costs among beneficiaries -- passengers and jurisdictions.

In short, I do not expect this process to lead to a shift in the allocation of Federal dollars toward the more rapidly growing areas which have the tax base to support transit operations, since "wealth" and local transit expenditures are mutually independent.

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SUBSTITUTION BY NON-FEDERAL SUBSIDIES

QUESTION: To some extent, I would imagine, the Administration believes that the loss of Federal operating assistance will be made up by increases in State and local subsidies. Have you done any assessment to determine how realistic that expectation may be?

ANSWER:

In areas where transit is an important component in the local economy, it is realistic to expect the necessary portion of the Federal subsidy to be replaced by State and local sources. A recent Conference of Mayors study of local transit finances found widespread growth in State and local public contributions: 62 percent of the cities subsidize transit, by 1982 almost one-half the nation's transit systems will be receiving dedicated local tax revenues, and over thirty States currently contribute funds. This demonstrates that transit is a priority in many areas. The amount of replacement of federal with non-Federal funds will be proportionate to transit's importance as a factor in the local economy. New York and Illinois, for instance, are currently reforming their transit funding arrangements to cope with financing crises in New York City and Chicago. The contrasting case is represented by the Texas legislature which is considering a bill to take monies out of a State transit fund that was set up five years ago and return these monies to the general fund at the rate it was originally moved from the general fund to the transit fund. Apparently the need for transit funds did not come up to expectations in Texas.

We recognize, of course, that reductions in other Federal assistance programs to States and localities will result in increased competition for local dollars, at least in the short run. Therefore, before turning to States and local jurisdictions to replace Federal dollars, we would expect that transit operators would concentrate on the economic rationalization of service and user charges and better management methods to bring costs under control.

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Williams 5

POLICY ON SECTION 3 FUNDING FOR RAIL MODERNIZATION

QUESTION: Last year's legislation included a provision containing a formula allocation in Section 3 to assure a fair distribution of rail modernization assistance. This provision is not included in the Administration's bill. What will be the Administration's policy on funding of these programs in the future?

ANSWER:

The Administration's focus on Federal capital assistance for rail will be on the maintenance and renewal of existing proven rail systems that are an essential part of a large transportation network. Consequently, our proposal continues to provide an expanded level of rail modernization assistance.

We will continue to look for better techniques for distributing rail modernization funds that are both equitable and efficient.

Williams 6

FUNDING LEVELS FOR UMTA SALARIES AND EXPENSES

QUESTION: The legislation you sent up would have us authorize "such sums as are necessary" for UMTA salaries and expenses. Please explain what specific funding levels you expect to be appropriated in each year of the authorization, and how this relates to current levels? What is your justification for the (increase) (decrease)?

ANSWER:

The anticipated funding levels are as follows:

(dollars in millions)

FY 1982	FY 1983	FY 1984	FY 1985	FY 1986
$ 29.0	$ 29.0	$ 30.0	$ 30.0	$ 31.0

The anticipated funding level remains steady, except for minor increases for inflation.

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RESEARCH AND TRAINING

QUESTION: Your legislation requests that $400 million be made available for Research and Training over the next five years. Please explain to the Committee how these funds will be used.

ANSWER:

During the period covered by the proposed legislation, these funds will be used to contribute to the development of techniques, methods, practices, facilities and equipment which will improve level of service, quality and efficiency of transit operations and will reduce operating costs of public transportation. We plan to emphasize near-term hardware development of various subsystems based on priorities established together with suppliers and users. Also, emphasis will be placed on improving the methods and techniques for using current hardware more effectively and efficiently in delivering transit services to consumers. Special attention will be given to devising techniques to expand the opportunities for individual initiative and private sector participation.

Research and training in improved management, maintenance and operations, marketing and human resource development will also be emphasized, since previous research has produced tools and techniques that have produced cost savings and improved the quality of transit management. Our plans do not include programs which would develop or specify systems or vehicles. Neither do we plan to conduct any technological development in an urban environment until thorough testing of technological improvements has been completed.

Planning methods will be improved to permit much more meaningful short-range analyses to be conducted. Analytical back-up for decisions will

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be available more quickly to help transit managers respond effectively to immediate pressures to make fare and service changes. Through use of these improved planning methods comprehensive operational planning and management studies by transit operators will be possible. Management information may be more readily organized and presented using the planning tolls envisioned. Transit managers will be given the ability to forecast impacts of both systemwide and route-level changes and present the outcome in a format easily understood by local decision-makers.

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LOCAL OPTION PROVISION

QUESTION: In March, you submitted legislation to this Committee calling for a local option approach to providing transportation to the handicapped, subject to a Secretarial finding that such transportation service is "reasonably comparable to the transportation service provided to the general public". Earlier this week, you sent up a revised proposal dropping not only the requirement for a Secretarial finding, but also dropping any substantive criteria at all that might apply to the local program. It seems that any local program -- even if clearly inadequate -- would meet this requirement.

A. Please explain the reason for this change of position.

B. Please tell me, under your program, what assurances we have regarding the quality or level of service that will be available to handicapped citizens?

C. What recourse will handicapped citizens have to establish or enforce their rights to transportation service?

D. Is it your position that there is no Federal interest in the question of whether transportation services are provided to handicapped services?

E. If there is a Federal interest, how is it being carried out? Isn't this proposal totally inconsistent with the spirit of Section 504, which is still the law?

ANSWER:

A. As I outlined in my May 11, 1981 letter to you, DOT indicated in the section-by-section analysis that accompanied our March 17 transmittal that the local option provision that it contained was only a preliminary proposal. The language in our preliminary proposal that required "reasonably comparable" service was a Federal requirement nearly as vague as the language of Section 504 of the Rehabilitation Act itself. If the Federal government sets a vague Federal standard, it perpetuates delays and invites litigation. This has been our experience with Section 504.

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The purpose of our revised proposal is to provide a statutory mechanism that is locally self-executing. We believe that the authority and the responsibility for developing service criteria should be at the State and local level. The revised proposal was developed based on extensive discussions within the Administration.

B. The primary assurance regarding the quality of service for handicapped persons is the local decision-making process. State and local elected officials control the transit systems that they subsidize. Handicapped persons are afforded an opportunity to participate in a public hearing and comment process to make their views known to elected officials and to the transit operators. The recipient of UMTA funds then has the authority -- and the responsibility -- to develop a transit program that meets local needs.

We believe that services developed using such a local process are more likely to meet the basic transportation needs of handicapped persons than the current mainstreaming requirement. The current requirement does not help a handicapped person who cannot get to the transit stop.

C. Handicapped persons will be able to establish their needs using the public hearing and comment process. They can be assured that the service will meet the local criteria that are developed because a willfully false certification submitted by a recipient of Federal funds is punishable under Federal criminal law. Furthermore, if handicapped persons find that there is a pattern of service which fails to meet the local criteria, they can seek a court order directing the recipient to withdraw its certification. A recipient would then have to comply with Section 504 until a new certification is given.

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D. We believe that there is a basic Federal interest in giving the citizens of the United States the flexibility to make their own decisions. In the area of transportation for the handicapped, we believe that it is appropriate for the Federal government to ensure that State and local governments are conscious of the special transportation needs of handicapped persons and that they have the flexibility to address those needs.

It would be presumptuous for anyone in the Federal government to assume that State and local governments will be unmindful of the needs of the handicapped. Although state laws vary, several states, such as California and New York, have laws regarding use of transit facilities by the handicapped. That is an appropriate decision for the State and local governments to make.

E. As described above, we do not believe that there is an appropriate Federal interest to mandate the specific details of the kinds of service tht will be provided. We believe that our proposal embodies that philosophy of local flexibility.

The amendment that we propose for Section 16(d) represents an alternative to compliance with Section 504. A recipient would not have to comply with other Federal laws regarding the transportation of handicapped persons if it is currently certified under section 16(d).

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